Supreme Court, U.S.
FILED
JAN 7 - 2004
OFFICE OF THE CLERK

No. 03-974

In The
Supreme Court of The United States

In Re

ANDREI KEMP

Petitioner

On Petition for Writ of Mandamus
to The Supreme Court of The State
of New Jersey

PETITION FOR WRIT OF MANDAMUS

Andrei Kemp
Pro Se Petitioner/Plaintiff
1179 Carlton Terrace
Union, New Jersey 07083
Tel.: (908) 688 4427

QUESTIONS PRESENTED

POINT 1

THE SUPREME COURT OF THE STATE OF NEW JERSEY SANCTIONED SO DRASTIC DEPARTURES FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDING BY THE LOWER COURTS THAT THE CASE SHOULD BE DECLARED A MISTRIAL AND SENT FOR RE-TRIAL.

POINT 2

THIS IS A CASE OF JUDICIAL ANARCHY, A SOVIET-STYLE JUSTICE, A CASE OF CONSPIRACY OF ATTORNEYS, COURT EXPERTS, JUDGES AND PROSECUTORS, INCLUDING SEVERAL DEPARTMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE, TO OBSTRUCT JUSTICE AND PROTECT PROMINENT PEOPLE WHO COMMITTED CRIMINAL ACTS. THE SUPREME COURT OF THE UNITED STATES OF AMERICA SHOULD TAKE AN ACTION RESULTING IN CRIMINAL INVESTIGATION OF THE CASE.

POINT 3

THE SUPREME COURT OF THE UNITED STATES SHOULD TAKE AN ACTION RESULTING IN CONGRESSIONAL/INDEPENDENT INVESTIGATION OF THE NEW JERSEY JUSTICE SYSTEM AND COVER-UP BY PROSECUTORS.

POINT 4

BRINGING JUSTICE TO THE JUDICIAL SYSTEM ELIMINATES POTENTIAL ACTS OF VIOLENCE BY VICTIMS OF THE CORRUPT JUDGES. SHOWING THAT THE SUPREME COURT DOES NOT TOLERATE SOVIET-STYLE JUSTICE IS AN IMPORTANT STEP IN PREVENTING VIOLENCE AND TERRORIST ACTS BY ELIMINATING REASONING BEHIND SUCH ACTS. THE CASE SHOULD BE SENT FOR RE-TRIAL BY HONEST JUDGES.

LIST OF PARTIES

ANDREI KEMP

-Petitioner/ Plaintiff

v.

KRZYSZTOF L. NOWAK, Esq.

JAMES W. DOUGHERTY, Esq.

EDWIN A. ROSENBERG, Ph.D.

FAMILY AND CHILDREN'S SERVICES

ALLAN J. HERMANN, M.D.

STANLEY R. KERN, M.D.

JOSEPH T. MARTORANO, M.D.

-Respondents/ Defendants

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OPINIONS BELOW

(Citations of the official and unofficial reports of the opinions and orders entered in the case by courts and administrative agencies)

The opinions entered in the case by the Appellate Division of the Superior Court of New Jersey have been assigned "NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION" and have not been published.

JURISDICTION

The Petition is filed under the Rules of the Supreme Court of the United States, Rules 13 and Rule 20 to justify the granting of an Extraordinary Writ as an aid of the Court's appellate jurisdiction because exceptional circumstances warrant the exercise of the Court's discretionary power and that the adequate relief cannot be obtained in any other form or from any other court. The following dates of the decisions of the Court of the State of New Jersey apply:

Decisions of the Superior Court of New Jersey (trial court): August 4, 2000 – six orders (Appendix B, p. 8 to 17).

Decisions of the Superior Court of New Jersey (trial court): December 15, 2000 – two orders (App. B, p. 18 to 21).

Decision of the Superior Court of New Jersey (trial court): May 30, 2002 – one order (see App. B, p. 22 and 23).

Date of the decision of the Superior Court of New Jersey Appellate Division: April 14, 2003 (see App. A, p. 1 to 7).

Date of the decision of the Supreme Court of New Jersey denying discretionary review: July 01, 2003 (see App. B, p. 8 to 23).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

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Amendment XIV - Citizenship rights.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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(APPLICABLE) RULES GOVERNING COURT OF THE STATE OF NEW JERSEY

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RULE 1:13. MISCELLANEOUS RULES AS TO PROCEDURE

1:13-1. Clerical Mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission may at any time be corrected by the court on its own initiative or on the motion of any party, and on such notice and terms as the court directs, notwithstanding the pendency of an appeal.

Note: Source-R.R. 3:7-14.4:62-1, R:7-12.

COMMENT

The text of this rule, as adopted as part of the 1969 revision, added to the source rules the "notwithstanding the pendency of an appeal" proviso to make clear that that circumstance does not suspend the power of the trial court to correct clerical errors in the record

made before it. Compare R. 1:9.1 (supervision by appellate court after filing of notice or appeal or petition with certification) with R. 2:5-5 (permitting the court below to correct errors in the record after the taking of the appeal). Note further that this rule is applicable to the Chancery Division, Family Part. Although there was no such provision in the former rules, that court clearly had the inherent power to correct clerical errors in its records.

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2:9-1(l) RULES GOVERNING APPELLATE PRACTICE

RULE 2:9. MISCELLANEOUS PROCEEDINGS PENDING APPEAL

2:9-1. Control by Appellate Court of Proceedings Pending Appeal or Certification

(a) Control Prior to Appellate Disposition. Except as otherwise provided by R. 2:9-3,2:9-4 (ball), 2:9-5 (stay pending appeal), 2:9-7 and 3:21-10(d), the supervision and control or the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed. The trial court, however, shall have continuing jurisdiction to enforce judgments and orders pursuant to R. 1:10 and as otherwise provided. The appellate court may at any time entertain a motion for directions to the court or courts or agencies below or to modify or vacate any order made by such courts or agencies or by any judge below.

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4:17-4. Form, Service and Time of Answers

(a) Form of Answers; By Whom Answered. Except as otherwise provided in this rule, interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if a public or private corporation, a partnership or association, or governmental agency, by an officer or agent who shall

furnish all information available to the party. If a party is unavailable, the interrogatories may be answered by an agent or authorized representative, including a liability carrier who is conducting the defense, whose answers shall bind the party. The party shall furnish all information available to the party and the party's agents, employees, and attorneys. The person answering the interrogatories shall designate which of such information is not within the answerer's personal knowledge and as to that information shall state the name and address of every person from whom it was received, or, if the source of the information is documentary, a full description including the location thereof. Each question shall be answered separately, fully and responsively either in the space following the question or on separate pages. Except as otherwise provided by paragraph (d) of this rule, if in any interrogatory a copy of a paper is requested, the copy shall be annexed to the answer. If the interrogatory requests the name of an expert or treating physician of the answering party or a copy of the expert's or treating physician's report, the party shall comply with the requirements of paragraph (e) of this rule.

(b) Service of Answers; Time; Enlargement of Time. The party served with interrogatories shall serve answers thereto upon the party propounding them within 60 days after being served with the interrogatories. For good cause shown the court may enlarge or shorten such time upon motion on notice made within the 60-day period. Consent orders enlarging the time are prohibited.

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4:23-5. Failure to Serve Answers to Interrogatories

(a) Dismissal.

(1) Without Prejudice. If timely answers to interrogatories are not served and no motion for an extension has been made pursuant to R. 4:17-4(b), the party entitled to the answers may move, on notice, for an order dismissing or suppressing the pleading of the delin-

quent party. The motion shall be supported by an affidavit reciting the facts of the delinquent party's default and stating that the moving party is not in default in answering, pursuant to R. 4:17-4(a), any interrogatories served by the delinquent party. Unless good cause for other relief is shown, the court shall enter an order of dismissal or suppression without prejudice.

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N.J.S.A RULES

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2A:53A-27. Affidavit required in certain actions against licensed persons

In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. The court may grant no more than one additional period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause. The person executing the affidavit shall be licensed in this or any other state; have particular expertise ...

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2A:53-28. Sworn statement in place of affidavit permitted

An affidavit shall not be required pursuant to section 2 of this (N.J.S.A. 2A-53A-27) act if the plaintiff provides a sworn statement in lieu of the affidavit setting forth that: the defendant has failed to provide

plaintiff with medical records or other records or information having a substantial bearing on preparation or the affidavit; a written request therefor along with, if necessary, a signed authorization by the plaintiff for release of the medical records or other records or information requested, has been made by certified mail or personal service; and at least 45 days have elapsed since the defendant received the request.

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STATEMENT OF THE CASE

SUPREME COURT OF THE UNITED STATES
PETITION FOR MANDAMUS

Petitioner respectfully prays to The Supreme Court of The United States for Mandamus of the decision of the Superior Court of the State of New Jersey, docket No. A-5203-01T1, dated April 14, 2003. This opinion of the nighest state court to review the merits appears as appendix A to the Petition and is unpublished.

INTRODUCTION

This statement describes facts relevant to the malpractice case Andrei Kemp v. Krzysztof Nowak et al., State of New Jersey docket No. MID-L-1719-00 related to my domestic violence case against my wife Nimia Kepka, docket No. UNN-FV-20-1827-97, divorce case, docket No. UNN-FM-20-1606-97 and Appellate Division cases, (this) malpractice case, docket No. A-5203-01T1 and (the domestic violence/divorce case) App. Div. docket No. A-6081-98T1 and the Supreme Court Orders denying my Petitions for Certification of the Appellate Court decision, No. 49,891 (domestic violence/divorce case) and 54,712 (this malpractice case).

Case A-5203-01T1 also included my Motion to Strike a Document Submitted to Court, App. Div. Motion No. M-957-02, which was considered and determined together with the appeal on April 14, 2003. The document was submitted by def. Edwin Rosenberg in his appellate reply brief, pages DRa-1 to DRa13 as a Court Ordered Custody Evaluation Report dated March 2, 1998 and it was substantially different that the original expertise submitted to the Superior Court of New Jersey, Union County, in March of 1998.

This Petition contains the minimum facts and is supported only by a few documents proving that this

is a case of judicial anarchy and conspiracy to obstruct justice. The remaining facts and the additional evidence, if requested, will be submitted to the United States Supreme Court in appendix to brief on the merits in case if the Petition will be granted.

BASIC FACTS

In March of 1997 I filed a domestic violence case against my wife Nimia Kepka. The Trial Court granted me a restraining order and the custody of a daughter with the divorce and child custody evaluation pending. In March of 1998, being pro se, I suggested during a court hearing that my emotionally troubled wife could have been coerced by defendant Edwin Rosenberg, the child custody examiner, to have sex with him in exchange for a report favorable to her. I came to this conclusion after several unusual incidents occurred since Dr. Rosenberg got involved in the case. The Court accepted the suggestion of the attorney of my wife that I must be mentally ill to come to this conclusion. Under Court pressure I agreed to go for psychiatric examination. I selected three independent examiners. The Court sent letters to three psychiatrists/respondents suggesting or ordering them to diagnose me with paranoia. Copies of three letters disappeared form the Court files. The original Child Custody Examination Report prepared by def. Rosenberg was replaced with a falsified version. The judge signed a divorce judgment substantially different than recorded during the court hearing and denied my motion to correct the judgment supported by transcript of the procedure. The judge admitted in writing to series of "inadvertent errors" but the Court denied my motions to correct them leaving the divorce judgment requiring me to share my assets with my ex-wife without requiring my wife to share her assets with me. The Appellate division affirmed the judgment despite the written statement of the judge.

I filed a malpractice lawsuit against the child custody examiner, two attorneys, and three psychiatrists. The defendants did not produce answers to uniform interrogatories to be answered by defendants in malpractice cases, to supplemental interrogatories received from me and did not produce requested documents, particularly the letters received from the Court and the Child Custody Examination Report. The Trial Court, instead of dismissing defendants' pleadings as required by court rules, dismissed my complaint against the defendants. Since August of 1998 the Court assigned four child custody examiners and none of them agreed to perform the examination. The last assigned expert refused to write the report despite signed contract with me to perform the job. The Court denied my motion to assign another child custody expert and to correct the errors admitted by the Court in writing. In both, the divorce and the malpractice case, judges drastically violated court rules and ignored the evidence. While the Supreme Court of the State of New Jersey granted me Petition for Certification in my domestic violence/divorce case, this decision has been reversed and the original decision has been deleted from the New Jersey Supreme Court computer. I have this decision in writing.

Talking to many litigants at the Family Part in the Superior Court of New Jersey in Elizabeth, I found that there is no secret that the Presiding Judge of the Family Part, Melvin Whitken and defendant Rosenberg conspire to coerce women to have sex with them. The judge assigns himself to hearing of attractive women, appoints Dr. Rosenberg for child custody examination and the examiner presses the women to have sex with them in exchange for a favorable report.

I requested criminal investigation of the case as a conspiracy of court experts, attorneys and judges to protect defendant Rosenberg and judge Whitken. My numerous certified letters sent to the State Attorney General, FBI and U.S. District Attorney for the State of

New Jersey were ignored and they are not in the files of their offices. I have return receipt showing that the letters arrived. I also have records of telephone conversations confirming that the same letters were received from me by fax. Christopher Christie, the U.S. District Attorney for the State of New Jersey should disqualify himself from the investigation because he was a partner at the law firm Dughi and Hewit representing def. Rosenberg in my malpractice case. The same applies to Michael Chertoff, the head of Criminal Division at the U.S. Department of justice who comes from Elizabeth and apparently had private contacts with judges and court experts involved in the case.

My recent letter received by the office of the Inspector General of the U.S. Department of Justice, was not put in the system despite the fact that I have a signed return receipt. I am unable to find the current status of the requests for investigation at any of the law enforcement offices.

BACKGROUND

On March 20, 1997 I filed a Domestic Violence Complaint against my wife Nimia Kepka at the Union County Superior Court and, on March 26, 1997, Judge Jo Anne Spatola issued the Final Restraining Order against my wife and awarded me the custody of the child and stay in the family house ordering anger control counseling and only supervised child visitation for the mother.

On April 17, 1997 I filed the Complaint for Divorce. On August 26, 1997 the Presiding Judge of Family Part, Melvin Whitken assigned himself to a motion in place of Judge Spatola and appointed def. Edwin Rosenberg as a child custody examiner. On September 11, 1997, after a domestic violence hearing, the Court awarded the temporary child custody to my wife, pending the child custody evaluation by def. Rosenberg, with unsupervised visitation of the child

for me. The court accepted the argument of my wife's attorney that my wife attended series of counseling session for violent people and was able to control her behavior.

Due to serious court proven emotional problems of the custodian parent, def. Rosenberg was required to conduct the child custody evaluation within 45 days. Despite the pressure from the Court the psychologist did not finish the report within the time required by the Court. The report was ready only after 171 days. I was not allowed to have a copy of the report but I was allowed to see the report in the Court on March 18, 1998. I was shocked after seeing the report. In order to justify his recommendation for child custody to be given to my wife, the examiner fabricated facts (such as that I did not pay child support to my first wife for 12 years) and blamed me for the domestic violence. The truth is that I paid substantially more than I was required by the Court and I provided to the Court evidence to prove that. The report found me guilty of domestic violence despite the fact that my wife tried, unsuccessfully, to prove the same during the domestic violence trial. The examiner diagnosed me with depression, which I never had and which was not confirmed later by any of the three psychiatrists. I tried to find an explanation why the report was so drastically dishonest. There were also several strange incidents, which occurred since I met Dr. Rosenberg, and which I could not explain. I tried to find how could this happen and I went to Court believing that I might had found the only logical explanation.

On March 23, 1998 I was pro se in the Court. Before a child custody hearing, I told the defendant's attorney that I would like to talk to Judge Spatola in chambers because I had something important and sensitive to disclose. When the Judge agreed, I told the Judge and my adversary that I believed that my wife could have been victimized by the child custody examiner who, in my opinion, used very damaging

materials that I gave to him to coerce her to have sex with him.

My conclusion was the only logical explanation of several facts, particularly that Dr. Rosenberg's planned to visit my separated wife at home, and that it took him 4 times longer to finish the report than the time period he was given by the Court. This included also Dr. Rosenberg's strange behavior during the third and fourth interview, when he apparently tried to catch me on something that he could use against me. My concern was that my wife, despite all her problems, had very high ethical standards in her sexual behavior and this kind of experience would be a nightmare to her. After living with her for almost 10 years and knowing her most intimate secrets, I had reason to believe that the cause of her emotional problems was that she was abused as a child by her relatives and such a victimization by the court appointed expert would be the worst what could happen to her during the difficult time of divorce. Despite all her problems she is the mother of my child and her problems will always affect the daughter. In the chambers Judge Spatola said that it was possible that the child custody examiner could do such a thing to my separated wife, but asked me if I had a proof. I did not have any proof at that time.

When we were back in the courtroom my wife's attorney, Sherry Silver, asked for off the record time and shouted to the Judge that I was a mentally ill person with paranoia. When the trial resumed on the record, the Judge, despite agreeing in the chambers that something like that could happen, accepted the idea of my adversary that something was wrong with my mind but still continued the trial. The rest of the hearing was a mockery of justice. I was not allowed to say anything in the court. Whenever I started speaking, my adversary interrupted me. The Judge said that I should go for psychiatric examination after sending to the Court and to my adversary a letter containing the name of my examiner and the date of

my examination. The Judge repeatedly said that she would send the Child Custody Evaluation Report and a letter to the psychiatrist before the examination. The judge said (transcript of hearing):

"So within 30 days you'll furnish... ...the Court with the name of the psychiatrist who is going to be completing the evaluation, and you will also give us the – the date that you have scheduled for your consultation with that person. " and:

"...certainly the Court is prepared to send a letter to the – to the psychiatrist that you will select, sir, indicating the reason for its concern here." and:

"You have 30 days to send me the name and address of your treating -- proposed treating psychiatrist. It must be a psychiatrist, an M.D. psychiatrist, and I will then send a letter, with a copy of Dr. Rosenberg's evaluation." and:

"...I can dash off a letter to the doctor saying, you know, here is the presenting problem I see it and the reason for the referral."

I selected the defendant Family and Children's Services in Elizabeth, NJ, where the Court is located and, after the Judge sent the required documents, on April 09, 1998 I went for psychiatric examination by def. Allan Hermann. The "examination" was very special. The defendant asked me several questions but did not accept my answers and very aggressively pressed me to give him another answer. He refused to accept my evidence proving that the Child Custody Examination Report was based on fabrications. I went for another examination to def. Stanley Kern, M.D. The examination was not much better than the first. The examiner frequently shouted at me. Dr. Kern somehow missed in his report the main purpose of his examination, he did not write anything about my qualification for visitations and child custody. He apparently was too concerned to diagnose me with paranoia and to protect def. Edwin Rosenberg from my accusation. I asked Dr. Kern his opinion on my qualification for child custody and visitation. Dr. Kern

concluded that I am fully qualified for child custody, physical and legal, as well as for unsupervised visitations and he confirmed this by signing a Record of our Telephone Conversation. Thus, my adversary in the divorce case diagnosed me with the illness that has no impact on the child custody. Dr. Kern's report specified written materials received from me during my first visit and the Child Custody Examination Report received from the Court but did not include a letter from the Court. The Court definitely could not send the Report without a cover letter.

Later I contacted another psychiatrist, def. Joseph T. Martorano. Dr. Martorano accepted from me the same written materials that I offered to Dr. Hermann and gave to Dr. Kern, and a videocassette. After I told him that the case involved a child custody evaluation prepared by a psychologist, Dr. Martorano decided not to examine me and sent me to a psychologist, Dr. Robert Broad, for psychological examination. The examination by Dr. Broad was the only comprehensive and honest examination, which I had. I described what happened in the court, I explained my motivations and intentions and Dr. Broad said: *"You do not have any problems. Your only problem was that you did not have an attorney in the Court"*. He issued a report stating that I had a clear mind and, following my suggestion, recommended joint child custody.

Def. Martorano did not perform any examination on me and prepared his report based on Dr. Broad's report. When I asked him by telephone to write in the report specifically that I did not had paranoia, the psychiatrist told me that, although Dr. Broad assured him that I was free of such disorder, he could not write this in his report because he "got a letter from the Judge". Dr. Martorano found me fully qualified for physical and legal child custody and recommended joint child custody in his report but wrote in the report that *"there was no evidence of any thought disorder or paranoid ideation on examination other than the fixed idea that there had been a relationship*

between his (my) wife and the court psychologist." The defendant replaced the word "coercion" that I used with "relationship."

On May 01, 1998 I hired an attorney, def. Krzysztof Nowak, to represent me in the divorce trial scheduled for May 18, 1998 and to help me with the child custody issue. I specifically asked him to request the disclosure of my wife's assets, particularly her pension plan, and to get a copy of the letter written by the Court to the psychiatrists. Mr. Nowak assured me that he knew how to handle my case but he did not do anything.

At the end of June of 1998 I prepared a Certification to Support my Motion to disqualify the Child Custody Evaluation Report supported by evidence proving that the conclusion of the Report was based on fabricated facts. Mr. Nowak refused to file such motion. After the Court refused to accept the motion from me, I told the attorney that if he would not file the motion, I would discontinue his services and file the motion as pro se. As a result, Mr. Nowak filed the motion. The attorney did not give me a copy of the Notice of Motion and I was not aware that the Notice of Motion was substantially different than what I requested in my Certification to Support the Motion. Mr. Nowak did not request disqualification of the Child Custody Evaluation Report and did not ask for the new child custody evaluation as I asked in my Certification to Support the Motion. This motion disappeared in the Court without any ruling.

Despite my pressure, Mr. Nowak did not get the letter sent by Court to the psychiatrists and the disclosure of my wife's assets. He said that he sent a letter to the Court but that the Court did not sent him anything. Pressed about my wife's assets, Mr. Nowak told me that she would disclose her assets during the divorce trial.

On August 04, 1998, before the divorce hearing, in the courthouse, Mr. Nowak told me that my wife was not ready to disclose her assets and that this would be

a preliminary hearing for the trial in September when everything will be ready. Both attorneys had a pre-trial conference with the judge Katherine R. Dupuis. Mr. Nowak came several times to me telling me that the judge suspended the motion to disqualify the Report and ordered a family therapy to solve the child custody issue. He told me that this was not a consent order between the two parties, but a decision of the judge and he advised me not to protest anything in the courtroom because, according to him, my protest would turn the judge against me and put me in trouble. He advised me to appeal the judgment rather than to protest during the trial.

When the trial started, I was surprised that my wife's attorney, Sherry Silver, read the paragraphs of the consent between the parties. I expected that, after my adversary finishes her reading, my attorney would correct all the statements of Mrs. Silver. Following advice of Mr. Nowak I did not interrupt. My understanding was that my attorney knew better what to do in the court and I was afraid that, by not following his advice, I could find myself in such a bad situation as I was during the March 23, 1998 trial when I represented myself and accepted all conditions of my adversary. I was sure that everything ordered by the judgment would be a decision of the judge and I would be allowed to appeal such decision. When the Judge asked me if I voluntarily entered in the consent, I decided not to follow the advice of my attorney. I asked to change the supervised visitation to unsupervised. The judge did not agree and, under her pressure and only after the judge assured me that she would order the same, I agreed to solve the child custody issue with a help of family therapist and to supervised visitation for me for 60 days. The judge assured me on the record that if this solution would not work and the child custody issue would not be solved within 60 days, I would have the same rights as I had before the trial (i.e. ruling on my motion to disqualify def. Rosenberg's Report and a new custody

evaluation). The judge also scheduled on the record another hearing for September. Since the date of the hearing, August 4, 1998, five years past and the Court refused to grant me my rights, which I agreed to be suspended for 60 days only. There was no September hearing.

On September 03, 1998 I received from def. Nowak a proposed Dual Judgment of Divorce. The draft was substantially different that recorded and contained in the transcript of the hearing. The draft did not mention the 60-day period for solving the child custody and required me to give one half of my assets to my ex-wife without requiring her to give any of her assets to me. I called Mr. Nowak and told him that the draft is different that what was recorded in the Court. I asked him why the judgment was ready if the trial was not finished because my wife did not disclose her assets and the second hearing was scheduled to finish the trial. Mr. Nowak answered that there would be no hearing and that the divorce trial has been finished. I requested from Mr. Nowak to file objections to the proposed judgment, which was different than what recorded said in the Court. The attorney told me that the judgment was exactly as was decided during the trial and refused to file any objection. At that time I realized that the attorney cheated me.

On September 04, 1998 I filed objections to the proposed Dual Judgment of Divorce, Mr. Nowak notified the Court in his letter that he refused to file objections and we agreed to terminate our contract.

On October 19, 1998 I filed a Motion to Declare the August 04, 1998 trial a mistrial because of misrepresentation by my attorney. After a short hearing, on November 20, 1998, judge Dupuis denied the Motion and signed the Judgment of Divorce ignoring my objections. The judge said that if the attorney did what I claimed, the case was between me and him and I could sue him.

I decided to file an appeal and I found an attorney, def. James Dougherty, who promised to help me. Mr.

Dougherty told me that I could file an appeal only after getting the motion hearing transcript. When, on December 22, 1998, I went to Mr. Dougherty with the transcript, he told me that he was going for vacation and he could not help me to file an appeal before the January 05, 1999 dead line. He told me not to worry because, in his opinion, if the judgment was inconsistent with what was said during the trial, the matter qualified as a court error and the 45-day deadline did not apply to correct such error.

In order to take care of my case I had to find out what really happened to my two cases, the domestic violence case and the divorce case. Mr. Nowak refused to give me any documents. I asked the Court to give me access to my file. I came to the Court to see and copy the documents. The clerks of domestic violence Judge, Jo Anne Spatola, refused to talk to me because the domestic violence case was closed. When a clerk of divorce judge, Katherine Dupuis allowed me see and copy my file, I saw that the file was incomplete, it did not contain the Child Custody Evaluation Report prepared by def. Rosenberg, report of my examination by def. Hermann, letters sent by the Court the psychiatrists, etc. The only document, which I copied was the Notice of Motion filed by def. Nowak and scheduled originally for July 17, 1999. For the first time I saw this document and I realized that Mr. Nowak misrepresented me by missing the most important request, he did not ask for disqualification of the Child Custody Evaluation Report what I requested in my Certification to Support the Motion.

On April 15, 1999 I sent a letter to the Presiding Judge, Family Court, Melvin S. Whitken, J.S.C., asking for access to my court documents. One of the documents was the letter written by the Court to the psychiatrists. I received an answer and some of the documents including the report of my examination by def. Hermann but the judge could not find the letter. Also, judge Whitken did not answer the most

important for me question: What happened to my motion, which was scheduled for July 17, 1998?

Reading the report of my examination by def. Allan Hermann I found that the examiner fabricated that there was a domestic violence in my fist marriage by saying that he asked me that "*how come*" I "*had two wives and both relationship ended in angry and violent outburst*" and I answered "*That's the way it was*". Dr. Hermann did not ask me this question and I did not give such answer. This is a pure fabrication.

My new attorney, def. James Dougherty, prepared a draft of a motion to correct the Dual Judgment of Divorce but when I saw the text I realized that I could not trust him. At this time I discontinued services of Mr. Dougherty.

As a pro se I filed a Motion to Correct the Dual Judgment of Divorce and replace it with a judgment which I prepared based on the trial transcript. The motion was assigned to judge Dupuis, the divorce trial judge, despite the fact that she was already transferred to the Criminal Division. Judge Dupuis admitted during the motion hearing that the errors were made but refused to change the judgment. I filed and appeal of this order and a motion to stay the judgment. Judge Dupuis denied my motion but admitted in a Statement of Reasons (Appendix D, p. 25) that the Court "inadvertently' and "unfortunately" made twice the same error by not including the work related benefits of my wife to the division of marital assets. The Appellate Court entirely affirmed the judgment ignoring the statement confirming the court errors. I filed a Petition for Certification (appeal) to the Supreme Court of the State of New Jersey and a Motion to Allow Filing out of Time. Both were granted on June 20, 2000. Approx. one month later the Supreme Court accepted from my adversary opposition to my Petition for Certification without the required motion to allow filing out of time and reversed the decision granting me the appeal. The

original decision was removed from the Supreme Court computer.

Until now the Trial Court deadlocked the child custody issue. My motions to correct the "errors" admitted by the Court in division of the marital assets were denied. So far the trial Court appointed four other court experts/therapists. None of them agreed to perform the child custody evaluation or solve the child custody issue. The last expert, Dr. Silikovitz, who signed a contract with me, refused to finish the evaluation after spending several hours and charging me for the service. In my civil lawsuit contract/malpractice against Dr. Silikovitz, the Court dismissed the malpractice part and transferred it as contract case from the Superior Court in Elizabeth to the Superior Court in New Brunswick changing the docket No. to MID-L-947-03, because the child custody judge, David Issenman, decided to testify for the defense. Later the case was dismissed by the Court based on claim of "partial satisfaction". This is a violation of elementary logic because Dr. Silikovitz did not produce anything of any use for me and charged me for the service. Judge Issenman apparently pressed for the dismissal unwilling to testify under oath and expose himself to criminal responsibility for perjury.

On June 17, 2002 I wrote a letter to judge Issenman and Judge Spatola (App. E, p. 27) asking the Court to find the missing documents and appoint a child custody examiner who would not decline to perform the evaluation. This letter was not answered. In February of 2003 I filed a motion scheduled for March 7, 2003 requesting the same. Judge Issenman delayed the ruling on the motion until July 3, 2003 and denied my motion. The case was clearly out of the jurisdiction of judge Issenman, who should disqualify himself from the case due to the same reason, which caused the transfer of my case against Dr. Silikovitz to the Court in New Brunswick.

During my numerous visits to the Court in Elizabeth I found that there is no secret that the

Presiding Judge, Family Part, Superior Court of New Jersey, Union County, Melvin Whitken and def. Rosenberg coerce women to have sex. The judge, after seeing women waiting for their cases, assigns himself to cases of attractive women and appoints def. Rosenberg for child custody examination. The psychologist puts the women is a situation to lose custody, or in some cases, to be diagnosed with serious problems requiring expensive therapies or maybe institutionalization. I have reason to believe that this happened to the mother of my daughter, victim of abuse by her own relatives during her childhood in the Philippines.

On February 24, 2000 I filed a complaint, docket No. MID-L-1719-00, against the child custody examiner, my two attorneys, three psychiatrists and Family and Children's Services. I received requests to produce documents and interrogatories from five of the defendants, which I answered within the required time.

Between May 20 and June 10, 2000 I sent to the defendants interrogatories and requests to produce documents specifying requested information. None of the defendants provided me with legally valid (as required by R. 4:17-4, Form, Service and Time of Answers (Petition page (x)) documents and answers to my interrogatories. In July of 2000 defendants Martorano, Dougherty, Rosenberg, Family and Children's Services and Hermann filed motions to dismiss my complaints for failure to state a cause of action.

On July 28, 2000, based on Court Rule R. 4:23-5. Failure to serve Answers to Interrogatories, (a) Dismissal (Pet.(xi)) and N.J.S.A. 2A:53-28. Sworn statement in place of affidavit permitted (Pet. page (xii)), I filed a motion to dismiss the defendant's pleadings for failure to produce documents and answer my interrogatories, accept my sworn statement in place of affidavit of merit and compel the discoveries. On August 04, 2000 the Court, violating the Court Rule R. 4:23-5. Failure to serve Answers to Interrogatories, (a) Dismissal (Pet. page (xi)) denied my motion and

issued orders (App. B, pages 8 to 17) granting the motions of the five defendants and dismissing my case against them.

When def. Stanley Kern failed to answer my interrogatories and produce documents within the required time, I filed a Motion to Dismiss Pleadings of def. Stanley Kern, Accept (my) Sworn Statement in Place of Affidavit of Merit and Compel Discoveries. Later def. Kern filed a Motion to Dismiss (my) Plaintiff's Complaint as to Defendant Stanley R. Kern, with prejudice for failure to provide affidavit of merit. The Court, violating Court Rules, again dismissed my motion (see Order App. B, p. 18] and granted the motion of Dr. Kern (see order App. B, p. 20] dismissing my case against him. The Trial Court dismissed my case against def. Nowak without any motion to dismiss the case filed by the defendant (see the Court Order, App. B, page 22).

Trying to get access to missing court documents which I needed to obtain affidavit of merit against the defendant, on November 8, 2000 I filed a motion to my divorce case for an order to find missing documents and provide me access to my court records. The motion did not change anything. I did not get access to any of the documents. The Court promised to search for the letter sent to the psychiatrists and dismissed the rest of the motion. Judge Issenman also ignored my letter (App. E, p. 27) asking for access to the documents and on July 3, 2003 denied my motion (scheduled for March 7, 2003) to give me access to the documents.

On June 12, 2002 I filed an Appeal, docket No. A-5203-01T1, of the orders in this malpractice case. On October 15, 2002 I filed a Motion (M-957-02) to Strike Document (the falsified Child Custody Evaluation Report) submitted to Appellate Court in the reply brief of def. Edwin Rosenberg. Both were decided on April 14, 2003. The Appellate Division affirmed the Trial Court decision and denied my motion to strike the falsified document (see decision, App. A, p. 1). On May

8, 2003 I filed a Petition for Certification of this decision to the Supreme Court of the State of New Jersey (docket No. 54,712). On July 1, 2003 the Court denied my petition (see Order, App. C, page 24).

In February of 2001 I sent a letter (App. F, p. 30) to the New Jersey State Senate Judiciary Committee asking for help. State Senator William Gormley forwarded my letter to Advisory Committee on Judicial Conduct. Patrick J. Monahan, Jr., counsel of the Committee, kept my letter in his drawer instead of giving it to the Chief Investigator and did not submit my case to the Committee. He sent me a letter incorrectly claiming that the Committee *"does not have jurisdiction to review judicial decisions."* In July of 2001 I sent a second letter (App. G, p. 37) to Senator Gormley. I never got any answer.

Since January 2002 I sent numerous letters to the State of New Jersey Attorney General, the U.S. District Attorneys and the Federal Bureau of Investigations offices in New Jersey and Manhattan, New York, and to several offices at the U. S. Department of Justice in Washington D.C. including three letter to Mr. John Ashcroft, U.S. Attorney General. When I found that my letters "were not in the system", I faxed them and I recorded telephone conversations confirming that the faxes have been received. I have records of tens of such conversations.

Appendix H, page 46, is a copy of my letter to Christopher Christie, U.S. District Attorney for the State of New Jersey. When I found that this letter "was not in the system" I sent a fax (App. J, p. 48) enclosing the letter and a few other documents and suggesting that Mr. Christie should disqualify himself from the case because he was a partner in the law firm of Dughi and Hewit representing defendant Rosenberg. In my numerous (recorded) telephone conversations employees of the office promised to send an answer. No answer arrived.

Appendix K, page 50, is my letter to Mr. Michael Chertoff, head of the Criminal Division at the U.S.

Department of Justice. Appendix L, an unsigned and senseless letter written by Correspondence Management Staff(!?), Office of Administration, is the answer which I received. I discussed all untrue statements from this letter in my second letter to Mr. Chertoff dated March 25, 2003 (App. M, p. 55). I also suggested that Mr. Chertoff should disqualify himself from the case because he comes from Elizabeth, NJ, where my divorce Trial Court is located, and he may personally know judges and court experts involved in the case. I sent by certified mail copies of this letter to Mr. Ashcroft and Mr. H. Marshall Jarrett, head of the U.S. Department of Justice Office of Professional Responsibility. I did not receive any answer.

In addition to the letter appendix L, I received a letter from the U.S. District Attorney Office in Manhattan claiming that the case is out of its jurisdiction and a senseless letter (App. N, p. 61) from Shamelle N. Lyles, Program Analyst at the Office of Professional Responsibility of the U.S. Department of Justice.

ERRORS IN COURT DECISION

The Appellate Court decision (App. A, p. 1) states that the Judges disagree ("*We disagree*")that *"(1) This is a "common knowledge" malpractice case; (2) Defendants failed to provide him, within forty-five days of his demand, with information necessary for preparation of an affidavit of merit."* (App. A, page 5, bottom). The decision of the Supreme Court of New Jersey, case Hubbard v. Reed, 168 N.J. 387 (2001) (App. P, p. 63) states:

> *"we hold that an affidavit need not be provided in common knowledge cases when an expert will not be called to testify "that the care, skill or knowledge . . . [of the defendant] fell outside acceptable professional or occupational standards or treatment practices." N.J.S.A. 2A:53A-27. . . . . The doctrine applies where "jurors' common knowledge as lay persons is sufficient to enable them, using ordinary*

understanding and experience, to determine a defendant's negligence without the benefit of the specialized knowledge of experts." Estate of Chin v. Saint Barnabas Med. Ctr., 160 N.J. 454, 469 (1999). Thus, a plaintiff in a common knowledge malpractice case will not need expert testimony at trial to establish the standard of care or a deviation therefrom."

While I clearly stated that I would not call an expert to testify in this case, the judges did not agree that jurors' knowledge as lay persons is sufficient to enable them to determine the defendants' negligence. This is clearly not true. Any reasonable person can agree that an attorney who refused (in writing) to file an objection to a judgement, which contained errors admitted by Court in writing, as is the case of def. Nowak, was negligent. Similar logic applies in my case against the other attorney, def. Dougherty.

A lay person can easily agree that the defendants-psychiatrists should not follow the suggestion of the Court because judges are unqualified to diagnose litigants with mental illness. Also, my statement that I believe that my emotionally troubled wife could have been coerced to have sex is by far insufficient to diagnose me with paranoia, because this happens and could have happen in the case. Any lay person would agree that def. Rosenberg committed malpractice concluding that I was responsible for domestic violence and basing his report on the fabrication that I did not pay child support for 12 years if I have records showing that I paid substantially more than I was ordered to pay. Any juror who would review the evidence would agree that this is a case of criminal conspiracy of court experts, attorneys and judges who ignored the law, the evidence, tampered with court records by removing the critical documents, the original child custody evaluation report and the three letters sent to the psychiatrists by the Court.

The Appellate Court opinion states that according to N.J.S.A. 2A:53A-28 (Pet. page (xii)):

"An affidavit shall not be required pursuant to section 2 of this (N.J.S.A. 2A:53A-27) act if the plaintiff provides a sworn statement in lieu of the affidavit setting forth that the defendant has failed to provide plaintiff with medical records or other records or information having a substantial bearing on preparation of the affidavit; a written request therefor along with, if necessary, a signed authorization by the plaintiff for release of the medical records or information requested, has been made by certified mail or personal service; and at least 45 days have elapsed since the defendant received the request."

The opinion does not claim that the defendants answered my interrogatories and requests to produce the documents within the 45-day period what confirms my claim that this happened. Instead, the decision says:

"Plaintiff fails to qualify for the relief provided by this section for two reasons: (1) We have construed the section "to require a plaintiff to identify with specificity any medical records or other information he believes are needed to prepare an affidavit of merit, in order to trigger the running of the forty-five day period for a response." Scaffidi v. Horvitz, 343 N.J. Super. 552 (App. Div. 2001). This obligation must be met at the time a plaintiff demands documents, not after-the-fact, in order to effectively apprise the defendant of the essential nature of a particular document, as opposed to the many documents plaintiff seeks for general discovery purposes. Id. at 558-59. Plaintiff did not meet this obligation. (2) Our review of the record persuades us that plaintiff had in his possession all of the materials necessary to obtain an affidavit of merit. We agree with the trial judge's assessment in this regard: "[Y]ou can't comply (with the affidavit of merit statute]. You were given enough time, you had enough information, I feel as a matter of law, to get

an affidavit of merit, you did consult experts. They won't give that affidavit, and that's very telling."
Both Statements are not true.

Statement (1) that I failed to identify with specificity the records is not true. My appeal case appendix contains my requests to produce documents which specify that I requested all the correspondence between the experts and the Court (including the letter sent by the Court to the three defendants), signed copies of my psychiatric evaluations and signed Child Custody Evaluation Report. None of the defendants produced the requested documents. I received from def. Rosenberg the requested document, his report, only as an appendix to his reply brief to the Appellate Court. This document was not produced when I requested. In addition, this is a falsified document, substantially different than the Report sent to the Court in March of 1998.

I do not agree with the statement (2) that the Trial Court judge said in that I *"had enough information"*, for the purpose of obtaining an affidavit of merit. I needed documents on paper, evidence. I did not have access to the letters sent by the Court to the three defendants because they have been removed, and they are still missing, from the divorce file. The three defendants-psychiatrists who received them did not produce the letters on my request. The same happened to the Report written by Dr. Rosenberg. The Report was removed from the divorce Court files. The Appellate Court conclusion is based on claim that I had enough information, while to obtain an affidavit of merit I needed documents that are signed by the authors. Thus, my sworn statements that the defendants failed to provide me with the documents required to obtain affidavit of merit should be accepted in place of such affidavits.

The decision of the Appellate Court does not specify why my *"motion to strike a document in the appendix of respondent, (M-957-02), . . . is denied."* (Appellate Court decision, App. A, p. 7, last sentence).

The judges apparently could not invent any logical reason why my motion for striking a falsified document submitted to the court should be denied if it is possible to find the truth because the psychiatrists have a copy of the original document. None of the three defendants-psychiatrists who have the original report filed an opposition to the motion. It is unlikely that the psychiatrists, who diagnosed me with paranoia, would miss the opportunity to prove that my claim that the document is falsified is another proof that I have such illness. To do this, all three of them would have to replace the copy of the original document in their files with the falsified one. This would be a serious criminal act, obstruction of justice and conspiracy. They apparently did not want to go that far and risk criminal responsibility for such act. The Appellate Court new that the report of my psychiatric evaluation by Dr. Kern shows the Child Custody Evaluation Report at the first page in the list of materials used for the examiner (the two other psychiatrists did not specify such materials but they did not dispute my claim that they have the original Report in their files). Requesting the Report from defendant Kern and comparing it with the report submitted by def. Rosenberg to the Court would bring the solution. The Appellate Court did not want to find the truth. The judges preferred to obstruct the justice and join the conspiracy and the cover-up.

ADDITIONAL COMMENTS

This is a case of conspiracy of attorneys, court experts and judges to protect two prominent people, the Presiding Judge of Superior Court of New Jersey, Union County, Family Part, Melvin Whitken and the court expert, def. Edwin Rosenberg, who coerce women to have sex with them. It is a case of judicial anarchy that started soon after I accused the prominent child custody examiner of victimizing my legally separated wife by coercing her to have sex with

him. My wife was not the only victim. The coercion continued for many years. The victims are helpless due to absolute power of the judge, who has powerful friends in all branches of the New Jersey government, including judicial and law enforcement branch, and is sure that nobody will start investigation. The two prominent people are apparently protected by Michael Chertoff, Assistant U.S. Attorney General and the head of Criminal Division at the U.S. Dept. of Justice. Mr. Chertoff comes from Elizabeth, NJ, the city where the Trial Court is located. Mr. Chertoff and Mr. Christie clearly violated the law by not taking any action. They both should disqualify themselves due to the conflict of interest, in case of Mr. Chertoff because of the fact that he privately knows people involved in the case in Elizabeth Court, Mr. Christie because he was a partner in the law firm which represents def. Rosenberg in this malpractice case.

Court has no right to deny my motion to correct the errors admitted by the same Court in writing. Judge Dupuis lied in her Statement (App. D, page 31) that the *"provisions had been inadvertently omitted"* and she lied that *"this Court is without jurisdiction . . . to enter an Order correcting same at the present time."* Court Rule 1:13-1 (Pet. page (ix)) clearly states that:

> *Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission may at any time be corrected by the court on its own initiative or on the motion of any party, and on such notice and terms as the court directs, notwithstanding the pendency of an appeal.*

The Court not only missed within close to four years to correct the "omission" on its own initiative, but denied my motion to correct same. Is this the third "inadvertent omission" or judicial anarchy?

New Jersey has a tradition of corruption by far greater than any other state. This could not happen without cooperation of prosecutors. An article *Culture of Corruption* written by John Farmer Jr., former State

of New Jersey Attorney General, and published by *The Star-Ledger,* the largest New Jersey newspaper, on April 28, 2002 describes the situation. Mr. Farmer wrote that *"Gov. Richard J. Hughes' Blue Ribbon Commission . . . (concluded) that "a pervasive feeling of corruption" contributed to the Newark (N.J.) riots."* A three-full page interview titled: *A State of Corruption* of *The Star-Ledger* (Nov. 10, 2002 issue) with four prosecutors contains the following statement from Ed Stier, former director of the State of New Jersey Attorney General Office, Division of Criminal Justice: *"As a prosecutor, you run the risk every day of being fired because of pressure... by people who have influence."*

While at least three judges in the neighboring states (New York and Connecticut) have been recently indicted for corruption and one of them pleaded guilty and is in prison, I have not heard about any case of a corrupt judge investigation in the State of New Jersey. The U.S. District Attorney and the FBI refuses to investigate judicial corruption in this state. People who request such investigation are routinely intimidated by the law enforcement agencies. When I suggested to a law enforcement agent that the Court in Elizabeth is so corrupt that there is a possibility that a victim of this situation can commit a violent act, two detectives from the Union Township Police Department came to my home accusing me of terrorist threats. In addition, on Sept 9, 2003 I received a call from Raymond Manfredi (tel. No. 973 792 3238) member of the anti-terrorist task group of the FBI office in Newark, New Jersey, who wanted to talk to me about my "terrorist thread." We scheduled his visit to my home for Sept 11, 2003 morning, but the investigator apparently changed his mind, did not come and did not answer my message to him.

There is no doubt that feeling of injustice is one of the reasons, maybe the main reason, of terrorism. The Associated Press wrote on November 13, 2001 in an article *"Powell urges attack on the reasons for*

terrorism" that our Secretary of State, Colin Powell, made a speech at the United Nations Security Council on November 12, 2001 saying that *"The war on terrorism must be fought with increased support to promote democracy and alleviate poverty so there will be no reason for terrorists to exist."* The agency wrote: *"The war on terrorism starts with each of our respective sovereign borders,"* Powell said. *"It will be fought with increased support for democracy programs, judicial reform, conflict resolution..."* Accusing me of making terrorist threads by repeating concerns of our Secretary of State is a clear abuse of the Patriot Act. I have information that women who complained against judge Whitken were intimidated and threatened with being in more troubles if they will not give up.

The current level of corruption and abuse of power by the government in the State of New Jersey makes practically impossible to obtain an affidavit of merit against people who have influence. In my divorce case, four court appointed child custody examiners refused to perform child custody examination. My letter asking the Court (App. E, p. 27) to appoint another expert was ignored. My motion to appoint another examiner has been denied. This evidence points to the conclusion that that the corrupt system cannot find any court expert who would join the conspiracy. Can I find an expert who will help me to challenge the conspiracy? Definitely not. The Supreme Court has the choice to bring to the end this situation.

What the two letters that I received from the U.S. Department of Justice (App. L, p. 53 and App. N, p. 61) say is clearly not true. State authorities investigate only disciplinary misconduct of judges, not criminal acts. All the investigations of state judges that I know, including the three judges in the neighboring states, were conducted by the federal authorities, the FBI and U.S. District Attorneys.

The entire case is a drastic violation of The Constitution of The United States of America, Amendment XIV - Citizenship rights (Pet. page (ix)).

The State deprived me of liberty and property without due process of law, denied me justice and the equal protection of the laws.

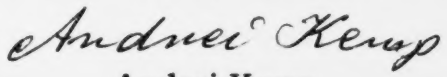
REASONS FOR GRANTING THE PETITION FOR MANDAMUS

The Petition is filed under the Rules of the Supreme Court of the United States, Rule 13 and Rule 20 to justify the granting this Petition for Mandamus as an aid of the Court's appellate jurisdiction because exceptional circumstances warrant the exercise of the Court's discretionary power and that the adequate relief cannot be obtained in any other form or from any other court. The documents submitted in my Appendix, including my correspondence with the U.S. Department of Justice, support my claim that I exhausted all means to find justice in any other form and the case is a conspiracy to obstruct justice with the proven involvement of the United States Department of Justice. The Petition should be granted on the ground that the matter presents a question of public importance and also that the interest of justice requires such certification. Bringing this case to justice will prevent Soviet-style justice from becoming the standard reality in our country and is particularly important in our fight against violence and terrorism.

CONCLUSION

The Petition for Mandamus should be granted.

Respectfully submitted,



Andrei Kemp

Dated: December 02, 2003

APPENDICES

(Stamped) FILING DATE APPELLATE DIVISION APR 14 2003 s/(illegible signature) CLERK

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5203-01T1

ANDREI KEMP.
Plaintiff-Appellant,

v.

KRZYSZTOF L. NOWAK, ESQ., JAMES W. DOUGHERTY, ESQ., EDWIN A. ROSENBERG, FAMILY AND CHILDREN'S SERVICES, ALLAN J. HERMANN, M.D., STANLEY R. KERN, M.D. AND JOSEPH T. MARTORANO, M.D., Defendants-Respondents.

Submitted March 12, 2003 -Decided APR 14 2003

Before Judges Wefing and Lisa.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, L-1719-00.

Adrei Kemp, appellant pro se.

Respondent Krzysztof L. Nowak, Esq. did not file a brief.

Wilsonr Elser, Moskowitz, Edelman & Dicker, attorneys for respondent James W. Dougherty, Esq., (Thoms F. Quinn, of counsel; Charles K. Meuse, on the brief).

Dughi, Hewit & Palatucci, attorneys for respon-

dent Edwin A. Rosenberg (Gary L. Riveles, on the brief).

Weiner Lesniak, attorneys for respondent Family and Children's Services (Alan J. Baratz, of counsel; Brad M. Weintraub, on the brief).

Lazarus & Billek, attorneys for respondent Allan J. Hermann. M.D. (Brian E. Yesalonis, on the brief).

Duran & Pandos, attorneys for respondent Stanley R. Kern, M.D. (Debra V. Urbanowicz-Pandos, of counsel; Robert w. Heym on the brief).

Timins, Beacham & Hughes, attorneys for respondent Joseph T. Matorano, M.D. (Arthur J. Timins, of counsel; Mr. Timins and Engy Abdelkader, on the brief).

PER CURIAM

Plaintiff, Andrei Kemp, appeals from a series of orders granting the motions of defendants to dismiss his complaint for failure to provide an affidavit of merit and corresponding orders denying his motions to dismiss defendants' pleadings, to accept his sworn statement in lieu of an affidavit of merit, to extend time for filing an affidavit of merit, and to compel discovery by defendants. On appeal, plaintiff contends:

POINT 1

THE CASE IS A COMMON KNOWLEDGE MALPRACTICE CASE AND THE AFFIDAVIT OF MERIT IS NOT REQUIRED.

POINT 2

THE SWORN STATEMENT SHOULD BE ACCEPTED IN PLACE OF AFFIDAVIT OF MERIT PURSUANT TO N.J.S.A. 2A:53A-28.

POINT 3

THE DOCUMENTS REQUESTED BUT NOT PROVIDED BY THE DEFENDANTS HAVE SUBSTANTIAL BEARING ON PREPARATION OF AFFIDAVIT OF MERIT AGAINST ALL DEFENDANTS.

POINT 4

THE LETTER FROM THE COURT TO THE PSYCHIATRISTS IS A CRUCIAL DOCUMENT FOR OBTAINING AFFIDAVIT OF MERIT AGAINST ALL THE DEFENDANTS EXCEPT DEFENDANT EDWIN ROSENBERG.

POINT 5

THE COURT SHOULD DISMISS THE PLEADINGS OF THE DEFENDANTS AND COMPEL DISCOVERIES AS REQUIRED BY THE COURT RULES.

POINT 6

THIS IS A CASE OF CONSPIRACY OF ATTORNEYS, COURT EXPERTS AND JUDGES TO PROTECT A JUDGE AND A COURT EXPERT WHO COERCE WOMEN TO HAVE SEX WITH THEM.

POINT 7

THE CASE AGAINST THE DEFENDANTS IS A PART OF THE FAILURE OF THE NEW JERSEY JUDICIAL SYSTEM TO PROVIDE JUSTICE IN A DOMESTIC VIOLENCE AND A DIVORCE CASE FILED BY ME AGAINST MY WIFE.

APPENDIX A

POINT 8

THE STATE OF NEW JERSEY VIOLATED MY CONSTITUTIONAL RIGHTS.

We reject these contentions and affirm.

Plaintiff and his former wife went through a divorce proceeding, which included a dispute regarding the custody of their daughter. The custody issue was resolved by awarding the parties joint legal custody, with plaintiff's former wife having physical custody.

Dissatisfied with the outcome of the Family Court proceedings, plaintiff brought this action against various professionals who were involved in those proceedings. He alleges professional negligence against each of them. We summarize briefly the complaint allegations against each defendant.

Krzysztof Nowak was the attorney who represented plaintiff in the divorce proceeding. Plaintiff alleges that Nowak "did not prepare the case for the divorce trial, did not do appropriate research before the trial,.... [and] did not protect plaintiff's interests in division of marital assets, child custody and visitation,...." After the divorce proceeding concluded, plaintiff alleges he consulted another attorney, James W. Dougherty, to file an appeal. He accuses Dougherty of "legal malpractice" for advising plaintiff to file a motion to revise the judgment rather than taking an appeal and then "refused to ask in the text of the motion for all the changes in the Judgment of Divorce requested by the plaintiff."

Dr. Edwin Rosenberg, a psychologist, was appointed by the court to conduct an evaluation. Plaintiff charges that Rosenberg "prepared a dishonest Child Custody Examination Report...., falsified two psychological tests and rejected the third test as 'too good to be true,' [and falsely] diagnosed the plaintiff as having serious psychological problems..." Dr. Allen J.

Hermann, a psychiatrist affiliated with defendant, Family and Children's Services, was selected by plaintiff to perform an evaluation. Plaintiff alleges that Hermann committed "professional malpractice" when he "refused to accept any evidence from the plaintiff, refused to accept plaintiff's answers to the examiner's questions, pressed the plaintiff to change the answers" and wrongly "diagnosed the plaintiff with paranoia and other disorders."

Plaintiff also selected Dr. Stanley R. Kern, a psychiatrist, to perform an evaluation. He accuses Kern of "professional malpractice" by "incorrectly applying psychological tests" and wrongly "diagnos[ing] the plaintiff with Paranoid Personality Disorder." Finally, Dr. Joseph T. Martorano, another psychiatrist, was selected by plaintiff. Plaintiff accuses Martorano of "professional malpractice" because, notwithstanding Martorano's review of the report of a psychologist, Dr. Robert D. Broad, Martorano wrongly "refused to clear Andrei Kemp from paranoia."

Plaintiffs seeking damages caused by professional malpractice are required to provide a defendant, within sixty days of the filing of an answer to the complaint, "with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices." N.J.S.A. 2A:53A-27. For good cause, one sixty-day extension may be granted. Ibid.

Plaintiff has not provided, timely or untimely, an affidavit of merit with regard to any defendant. Plaintiff contends his failure to provide this affidavit should be excused on two grounds:
(1) This is a "common knowledge" malpractice case; (2) Defendants failed to provide him, within forty-five days of his demand, with information necessary for preparation of an affidavit of merit. We disagree.

An affidavit of merit is not required in a "common knowledge" malpractice case. Hubbard v. Reed, 168 N.J. 387 (2001); Palangue v. Lambert-Woolev, 168 N.J. 398 (2001). This principle applies in situations where an expert is not needed to demonstrate the applicable standard of care or that a professional defendant breached a duty of care. Hubbard, supra, 168 N.J. at 393-94. "The doctrine applies where 'jurors' common knowledge as lay persons is sufficient to enable them, using ordinary understanding and experience, to determine a defendant's negligence without the benefit of the specialized knowledge of experts.'" Ibid. (quoting Estate of Chin v. Saint Barnabas Med. Ctr., 160 N.J. 454 (1999)). This is plainly not such a case. Considering the nature of the allegations, expert testimony is clearly required to establish the applicable standards of care in the legal, psychological and psychiatric professions, and how each defendant breached them.

N.J.S.A. 2A:53A-28 provides relief from the affidavit of merit requirement where a "defendant has failed to provide plaintiff with medical records or other records or information having a substantial bearing on preparation of the affidavit" if, after a written request "at least 45 days have elapsed" and the materials have not been furnished. Plaintiff fails to qualify for the relief provided by this section for two reasons: (1) We have construed the section "to require a plaintiff to identify with specificity any medical records or other information he believes are needed to prepare an affidavit of merit, in order to trigger the running of the forty-five day period for a response." Scaffidi v. Horvitz, 343 N.J. Super. 552 (App. Div. 2001). This obligation must be met at the time a plaintiff demands documents, not after-the-fact, in order to effectively apprise the defendant of the essential nature of a particular document, as opposed to the many documents plaintiff seeks for general discovery purposes. Id. at 558-59. Plaintiff did not meet this

obligation. (2) Our review of the record persuades us that plaintiff had in his possession all of the materials necessary to obtain an affidavit of merit. We agree with the trial judge's assessment in this regard: "[Y]ou can't comply (with the affidavit of merit statute]. You were given enough time, you had enough information, I feel as a matter of law, to get an affidavit of merit, you did consult experts. They won't give that affidavit, and that's very telling."

Plaintiff's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Plaintiff's motion to strike a document in the appendix of respondent, (M-957-02), originally filed October 15, 2002, with amended motion filed on March 25, 2003, is denied.

Affirmed.

(Stamped) I hereby certify that the foregoing is a true copy of the original on file in my office.

s/(illegible signature)

CLERK OF THE APPELLATE DIVISION

(Stamped) FILED AUG 4 2000 HON. DOUG HAGUE

TIMINS, BEACHAM & HUGHES
COUNSELLORS AT LAW
3 Becker Farm Road
ROSELAND, NEW JERSEY 07068
Telephone: (973) 740-1771
Attorneys for Defendant Joseph T. Martorano, M.D.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX COUNTY
DOCKET NO. MID-L-1719-00

Andrei Kemp,
Plaintiff
vs.
Krzysztof L. Nowak, Esq., James W. Nowak, Esq., Edwin A. Rosenberg, Family and Children's Services, A11an J. Hermann, M.D., Stanley R. Kern, M.D. And Joseph T. Martorano, M.D.
Defendants

Civil Action
ORDER FOR DISMISSAL OF COMPLAINT, WITH PREJUDICE, FOR FAILURE TO SATISFY REQUIREMENTS of NJSA 2A:53A-26

THIS MATTER having been opened to the Court by Timins, Beacham & Hughes, attorneys for the defendant, Joseph T. Martorano, M.D. on Motion to dismiss the plaintiff's Complaint for failure to satisfy the requirements of NJSA 2A:53A-26 et. seq.; and the Court having considered the matter and for good cause appearing;

IT IS on this 4th day of August 2000,

ORDERED that the Judgment is granted in favor of defendant, and the Complaint of plaintiff, Andrei Kemp be and is hereby dismissed with prejudice for failure to satisfy the requirement of N.J.S.A. 2A:53A-26, et. seq.; and it is further

ORDERED that, within 7 days after the moving party receives a filed copy of this Order, a true copy of this Order must be served on all parties.

s / (illegible signature)

DOUG T. HAGUE, J.S.C. (stamped)

Papers considered:
-No opposition
-Opposition

(Stamped) FILED AUG 4 2000 HON. DOUG HAGUE

WILSON, ELSER, MOSKOVITZ, EDELMAN & DICKER LLP
33 Washington Street
Newark, New Jersey 07102
Tel: (973) 624 0800 Fax: (973) 624 0808
Attorneys for Defendant James W. Dougherty, Esq.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX COUNTY
DOCKET NO.: L-1719-00

ANDREI KEMP,
Plaintiff(s),
vs.
KRZYSZTOF L. NOWAK, ESQ., JAMES W. DOUGHERTY, ESQ., EDWIN A. ROSENBERG, ESQ., FAMILY AND CHILDREN'S SERVICES, ALLAN J. HERMANN, M.D., STANLEY R. KERN, M.D., JOSEPH T. MARTORANO, M.D.
Defendant(s).

Civil Action
ORDER

This matter having been opened to the Court on Crossmotion by defendant James W. Dougherty for an Order dismissing the plaintiff's Complaint with prejudice for failure to produce Affidavit of Merit, and the Court having considered the moving papers and good cause having been shown,

IT IS on this 4th day of August 2000,

ORDERED that plaintiff's Complaint together with any and all crossclaims by other defendants, be and hereby are dismissed, with prejudice, for failure to produce an Affidavit of Merit as required by N.J.S.A. 2A:53A-26, et. seq.; and it is

FURTHER ORDERED, that a copy of this Order shall be served upon all counsel of the record, and upon Andrei Kemp, Pro Se, within 7 days hereof.

s/(illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)

(Stamped) FILED AUG 4 2000 HON. DOUG HAGUE
DUGHI AND HEWIT
340 North Avenue
Cranford, New Jersey 07016
(908) 272 0200
Attorneys for Defendant, Edwin Rosenberg, Ph. D.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO. MID-L-1719-00

ANDREI KEMP, pro se,
Plaintiff,
vs.
Krzysztof L. Nowak, et al.,
Defendants.

Civil Action
ORDER

This matter having been opened to the Court on application of Dughi and Hewit, attorneys for defendant, Edwin Rosenberg, Ph.D., for an Order dismissing the plaintiff's Complaint with prejudice for failure to produce an Affidavit of Merit, and the Court having considered the moving papers and good cause having been shown,

IT IS on this 4th day of August 2000,

ORDERED that plaintiff's Complaint, and any and all Crossclaims, shall be and hereby are dismissed with prejudice for failure to produce an Affidavit of Merit as required by N.J.S.A. 2A:53A-26, et. seq.; and it is

ORDERED, that a copy of this Order shall be served upon all counsel of the record within 7 days hereof.

s / (illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)
CROSSMOTION OPPOSED _____
CROSSMOTION UNOPPOSED _____

(Stamped) FILED AUG 4 2000 HON. DOUG HAGUE

WEINER LESNIAK
629 Parsippany Road
Post Office Box 438
Parsippany, New Jersey 07054-0438
(973) 403-1100 Fax: (973) 403 0010
Attorneys for Defendant, Family and Children's Services
Our File No. 84989

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX COUNTY
DOCKET NO.: L-1719-00

Plaintiff
ANDREI KEMP,
vs.
Defendants
KRZYSZTOF L. NOWAK, ESQ., JAMES W. DOUGHERTY, ESQ., EDWIN A. ROSENBERG, FAMILY AND CHILDREN'S SERVICES, ALLAN J. HERMANN, M.D., STANLEY R. KERN, M.D., JOSEPH T. MARTORANO, M.D.

Civil Action
ORDER DISMISSING COMPLAINT, WITH PREJUDICE, FOR FAILURE TO STATE A CAUSE OF ACTION

This matter having been brought before this Court on cross-motion of Alan J. Baratz, Esq., of the law firm of Weiner Lesniak, attorney for defendant, Family and Children's Services, on notice to all counsel and the plaintiff, pro se, for an Order dismissing plaintiff's complaint with prejudice for failure to state a cause of action in accordance with N.J.S.A. 2A:53A-26, et seq. and the Court having read and considered all papers submitted in connection with the application and the arguments of the counsel, and for good cause appearing;

IT IS 4th day of August 2000,

ORDERED that the Complaint of the plaintiff, Andrei Kemp as against the defendant, Family and Children's services, be and hereby is dismissed with prejudice, for his failure to state a cause of action in accordance with N.J.S.A. 2A:53A-26, et. seq.; and it is further:

ORDERED, that within 7 days after the moving party receives a filed copy of this Order from the Court, a true copy of this Order must be served on all parties.

s / (illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)

(Stamped) FILED AUG 4 2000 HON. DOUG HAGUE
LAZARUS & BILLEK, P.A.
10 Parsonage Road, Suite 306
Edison, NJ 08837
Attorney for Defendant, Allan J. Hermann, M.D.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NO.: MID-L-1719-00

ANDREI KEMP
Plaintiff
-vs-
Defendants
KRZYSZTOF L. NOWAK, ESQ. Defendant AND JAMES W. DOUGHERTY, ESQ. Defendant AND EDWIN A. ROSENBERG Defendant AND FAMILY AND CHILDREN'S SERVICES Defendant AND ALLAN J. HERMANN, M.D. Defendant AND STANLEY R. KERN, M.D. Defendant AND JOSEPH T. MARTORANO, M.D. Defendant.

Civil Action
ORDER

This matter having been brought before this Court by the law firm Lazarus & Billek, P.A., attorneys for defendant, Allan Hermannn, M.D., and for good cause shown,

IT IS on this 4th day of August 2000,

ORDERED that the plaintiff's Complaint, and any all cross claims, shall be and hereby are dismissed with prejudice, for his failure to produce Affidavit of Merit; and it is further

ORDERED that a copy of this Order shall be served upon all counsel of record within 7 days of the date of its receipt by the moving party.

s / (illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)

(Stamped) FILED AUG 4 2000 HON. DOUG HAGUE

ANDREI KEMP
1179 Carlton Terrace
Union, NJ 07083-4110
(212) 431 6900
(908) 688 4427
Pro Se Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-COUNTY OF MIDDLESEX
DOCKET NO. MID-L-1719-00

Andrei Kemp,
Plaintiff
vs.
KRZYSZTOF L. NOWAK, ESQ. Defendant AND JAMES W. DOUGHERTY, ESQ. Defendant AND EDWIN A. ROSENBERG Defendant AND FAMILY AND CHILDREN'S SERVICES Defendant AND ALLAN J. HERMANN, M.D. Defendant AND STANLEY R. KERN M.D. Defendant AND JOSEPH T. MARTORANO, M.D. Defendant

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Civil Action
ORDER

THIS MATTER having been opened to the Court by Andrei Kemp, Pro Se plaintiff by way of Cross Motion for an order to dismiss pleadings and compel discoveries of defendants Edwin Rosenberg, Family and Children's Services, Allan Hermann and Joseph Martorano and to accept plaintiff's sworn statement in place of Affidavit of Merit against defendants Edwin Rosenberg, Family and Children's Services, Joseph Martorano and Krzysztof Nowak, and the Court having received the moving papers, and for good cause shown;

IT IS, on this 4th day of August, 2000,

ORDERED that the pleadings of the defendants Edwin Rosenberg, Ph.D., Family and Children's Services; Allan Hermann, M.D. and Joseph T. Martorano, M.D., are dismissed; and it is further;

(stamped with large letters) DENIED

ORDERED that plaintiff's sworn statement is accepted in place of Affidavit of Merit against defendants Edwin Rosenberg, Ph.D., Family and Children's Services; Allan Hermann, M.D.; Joseph T. Martorano, M.D. and Krzysztof Nowak, Esq.; and it is further;

(stamped with large letters) DENIED

ORDERED the extension of the time allowed plaintiff to file Affidavit of Merit against defendant James Dougherty to 60 days after receiving all the requested documents from the other defendants; and it is further;

(stamped with large letters) DENIED

ODERED defendants Edwin Rosenberg, Ph.D., Family and Children's Services; Allan Hermann, M.D.; Joseph T. Martorano, M.D. and Krzysztof Nowak, Esq. to submit answers to the plaintiff's interrogatories and documents requested by the plaintiff within ..... days of the date hereof; and it is further;

(stamped with large letters) DENIED

ORDERED each of the defendants Edwin Rosenberg. Ph.D., Family and Children's Services, Allan Hermann, M.D., Joseph Martorano, M.D. and Krzysztof Nowak to pay the plaintiff $..... for a total of $..... for expenses for filing this motion; and it is further;

(stamped with large letters) DENIED

ORDERED that a copy of this Order shall be served upon all the counsel within ...7... days from the date herein.

OPPOSITION:.....Yes.....No

s / (illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)

(Stamped) FILED DEC 15, 2000 HON. DOUG HAGUE

ANDREI KEMP
1179 Carlton Terrace
Union, NJ 07083-4110
(212) 431 6900
(908) 688 4427
Pro Se Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-COUNTY OF MIDDLESEX
DOCKET NO. MID-L-1719-00

Andrei Kemp,
Plaintiff
vs.
KRZYSZTOF L. NOWAK, ESQ. Defendant AND JAMES W. DOUGHERTY, ESQ. Defendant AND EDWIN A. ROSENBERG Defendant AND FAMILY AND CHILDREN'S SERVICES Defendant AND ALLAN J. HERMANN, M.D. Defendant AND STANLEY R. KERN M.D. Defendant AND JOSEPH T. MARTORANO, M.D. Defendant

---

Civil Action
ORDER

THIS MATTER having been opened to the Court by Andrei Kemp, Pro Se plaintiff by way of Motion for an order to dismiss pleading and compel discoveries of defendant Stanley R. Kern, M.D. and to accept plaintiff's sworn statement in place of Affidavit of Merit against defendant Stanley R. Kern, and the Court having received the moving papers, and for good cause shown;

IT IS, on this 15th day of Dec., 2000,

ORDERED that the pleading of the defendant Stanley R. is dismissed; and it is further;

(stamped with large letters) DENIED

ORDERED that plaintiff's sworn statement is accepted in place of Affidavit of Merit against defendant Stanley R. Kern; and it is further;

(stamped with large letters) DENIED

ORDERED that a copy of this Order shall be served upon all the counsel within ..... days from the date herein.

s / (illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)

OPPOSITION:.....Yes.....No

(Stamped) FILED DEC 15 2000 HON. DOUG HAGUE
DURAN & PANDOS, P.C.
1044 Route 22 West
Mountainside, New Jersey 07092
908-518-5000
Attorneys for Defendant, Stanley R. Kern, M.D.
File No: 002.625

Superior Court of New Jersey
Law Division, Middlesex County
Docket No: MID-L-1719-00

ANDREI KEMP,
Plaintiff,
vs.
KRZYSZTOF L. NOWAK, ESQ., JAMES W. DOUGHERTY, ESQ., EDWIN A. ROSENBERG, ESQ., FAMILY AND CHILDREN'S SERVICES, ALLAN J. HERMANN, M.D., STANLEY R. KERN, M.D., JOSEPH T. MARTORANO, M.D.
Defendants,

Civil Action
ORDER

THIS MATTER having been opened to the Court BY Duran & Pandos, P.C., attorneys for Defendant, Stanley R. Kern, M.D., for an Order of Dismissal with prejudice pursuant to N.J.S.A. 2A:53A-27 and the Court having reviewed the moving papers, and for good cause shown;

IT IS, on this 15th day of Dec. 2000,

ORDERED that plaintiff's Complaint be dismissed with prejudice for failure to comply with N.J.S.A. 2A:53A-27 as to defendant, Stanley R. Kern, M.D.; and it is further;

ORDERED that a copy of this Order shall be served upon all counsel within seven (7) days from the date herein.

s / (illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)

OPPOSITION: _____Yes _____No

(Stamped) FILED MAY 30 2002 HON. DOUG HAGUE

Krzysztof L. Nowak
200 Perrine rd. suite 209
Old Bridge, N.J. 08857
732 679-3800
Pro Se

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MIDDLESEX COUNTY
Docket No. L 1719 00

Plaintiff
Andrei Kemp,
vs.
Defendant
Krzysztof L. Nowak, Esq., James Dougherty, Esq., Edwin A. Rosenberg, Family and Children's Services, A11an J. Hermann, MD, Stanley R. Kern, M.D. and Joseph T. Martorano, M.D.

Civil Action
ORDER OF DISMISSAL WITH PREJUDICE

This matter having been opened to the Court on application of defendant, Krzysztof L. Nowak, Pro SE, for an Order Dismissing plaintiff's Complaint with prejudice as pursuant to Court Order of Dismissal granted on the record on August 4, 2000, Hon. Douglas T. Hague, J.S.C. presiding and the Court having considered the Court transcript presented by the defendant, Krzysztof L. Nowak, Pro Se and good cause having been shown,

IT IS on this 30th day of MAY 2002,

ORDERED that plaintiff's Complaint as to defendant, Krzysztof L. Nowak, shall be and hereby is dismissed with prejudice for failure to produce expert testimony as to plaintiff's cause of action and is also hereby dismissed as per Court Order on the record dated August 4, 2000 dismissing plaintiff's Complaint.

ORDERED that a copy of this Order shall be served upon all the counsel of record within (7) days hereof.

s/ (illegible signature)
DOUG T. HAGUE, J.S.C. (stamped)

SUPREME COURT OF NEW JERSEY
C-1172 September Term 2002
54,712

ANDREI KEMP,
Plaintiff-Petitioner,

v.

KRZYSZTOF L. NOWAK, ESQUIRE,
Defendant,

and

JAMES W .DOUGHERTY, ESQUIRE ,
et al.,
Defendants-Respondents.

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5203-01 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 1st day of July, 2003.

s/(illegible signature)

CLERK OF THE SUPREME COURT

(This Statement of Reasons was attached to the Order of the Superior Court of New Jersey, Union County, Docket No. UNN-FM-20-001606-97 dated Nov. 5th 1999)

STATEMENT OF REASONS
DOCKET NO: FM-20-001606-97
KEMP v. KEPKA

The Judgment of Divorce in this matter was filed November 20, 1998. Thereafter defendant (error, should be "plaintiff") filed a Post Judgment Notice of Motion seeking, inter alia, a plenary hearing as to unsupervised visitation and one-half of his wife's work related benefits.

The Order dated May 17, 1999 on the Post Judgment Motion did not correctly reflect the Court's ruling as to the last issue. The agreement of the parties as placed on the record at the time of the Judgment of Divorce provided that the plaintiff would receive one-half of the defendant's work related benefits. This phrase was omitted from Judgment of Divorce. At the time of the Post Judgment motion defendant's counsel agreed the provision had been inadvertent1y omitted. Unfortunately this provision was also omitted from the May 17, 1999 Order of the Court. It is undisputed that plaintiff is entit1ed to one-half of defendant's work related benefits. However, this Court is without jurisdiction pursuant to R. 2:9-1 to enter an Order correcting same at the present time.

Defendant (error, should be "plaintiff") has now filed an appeal as to Paragraph 1,2 and 5 of the Judgment of Divorce. Paragraphs 1 and 2 deal with custody and visitation. Paragraph 5 relates to the date for division of assets.

By way of background, this court informed Mr. Kemp that it would not permit unsupervised visitation

until both parties and the child had seen a therapist. The Court anticipated that this would take two months from the November 1998 trial date. The Court did not learn until the filing of this motion that the parties had still not been to a therapist. The Judgment of Divorce provided that a therapist would be selected by the court who accepted U.S. Health Care. The Court received a copy of a list of providers and appointed a therapist. Months later the Court was informed that the therapist was no longer a covered provider. Thereafter, the Court appointed a therapist from Elizabeth, General Medical Center. The court's law clerk had called the center requesting the name of a therapist. For reasons unknown the therapist recommended did not handle children. This was not brought to the Court's attention until the filing of this motion.

Nonetheless, the parties both remain under Court Order to see a therapist with the child. The Court does not know if appointments have been made.

Plaintiff now seeks to stay the Judgment of Divorce. This Court does not believe that plaintiff has demonstrated that there is a probability of success on appeal and hence the appellate will be denied. Gloucester Cty. Bd. of Chosen Freeholders, 98 N.J. 186, 191 (1984).

(Stamped) RECEIVED JUN 17 2002
SUPERIOR COURT FAMILY PART

ANDREI KEMP
1179 CARLTON TERRACE
UNION, NJ 07083-4110
(908) 688 4427
Pro Se Plaintiff
June 17, 2002

VIA HAND DELIVERY

Hon. David J. Issenman, J.S.C.
Superior Court of New Jersey
Union County Courthouse
2 Broad Street, First Floor Annex
Elizabeth, New Jersey 07207

Re: Kemp v. Kepka.
Docket No.: FM-20-01606-97

Dear Judge Issenman:

I would like to remind you that my child custody case is still pending and I am waiting for the final judgement.

During the motion hearing on December 22, 2000 the Court agreed to find letters sent by Hon. Jo-Anne Spatola, J.S.C. to three psychiatrists. If the letters could not been found in the files of the Superior Court in Union County, a copy of the letters will be available from the following court experts who received the letters:
Joseph T. Martorano, M.D., a psychiatrist with his principal place of business located at 141 East 55th Street, New York, New York 10022;
Allan J. Hermann, M.D., a psychiatrist with Family and Children's Services located at 40 North Avenue, Elizabeth, New Jersey 07208;

Stanley R. Kern, M.D., a psychiatrist with his principal place of business located at 519 South Orange Avenue, South Orange, New Jersey 07079.

I also ask the Court to assign a child custody examiner who would not decline to perform a child custody evaluation. So far four court experts assigned by the Court to this case refused to perform the task. The last one, Dr. Ronald G. Silikovitz, declined to perform the child custody evaluation (see Enclosure 1) after signing a contract with me to perform the service. Despite the fact that during December 22, 2000 motion hearing this Court was informed that Dr. Silikovitz refused to perform the task, no other court expert was assigned.

I would like to notify the Court that on January 26, 2002 I sent to Christopher J. Christie, U.S. Attorney for the State of New Jersey, a request to investigate criminal judicial misconduct (see Enclosures 2 and 3). I asked specifically to investigate conspiracy and criminal conduct of judges and court experts who diagnosed me with mental illness to protect Presiding Judge of Family Part Melvin Whitken, J.S.C., and Dr. Edwin Rosenberg, psychiatrist, who, in my opinion, use their professional positions to coerce women to have sex with them. As I expected, my letter, received by the office of U.S. Attorney on January 31, 2002 (see Enclosure 3), was "lost". I sent the same letter as an attachment to my fax dated March 12, 2002 (see Enclosure 4) asking Mr. Christie to disqualify himself due to conflict of interest (see Enclosure 4) and transfer the case to the U.S. Attorney office in Manhattan. The office of Mr. Christie confirmed in a telephone conversation (audio record available upon request) that the fax was received. While the U.S. Attorney office promised to send me the information, I did not receive any answer and I am unable to find the current status of my case. Apparently the office of U.S. attorneys is covering-up the case.

There is apparently more and more evidence proving that this is an unprecedented high-profile case of criminal conduct and conspiracy being covered-up by the judicial and law enforcement branch of the New Jersey State government and U.S. attorney. This case sooner or later will be investigated by federal authorities or by the U.S. Congress. The investigation will prove, what is not a secret, that the corruption in our state is by far greater than described by the former state Attorney General, John Farmer Jr., in his famous article "Culture of Corruption" published in the April 28, 2002 issue of The Star-Ledger and cases of abuse of power by authorities bring our state to the level of "evil empire".

Please note that, due to the fact that a child is in danger, this case should be treated as a high priority and the contents of this letter should not be disclosed to the defendant.

Respectfully,

s/ Andrei Kemp

Enclosures:

1. Letter of Ronald G. Silikovitz, Ph.D., to plaintiff dated August 5, 2000 – 2 pages;
2. Plaintiff's letter-complaint to Christopher J. Christie, U.S. District Attorney, dated January 25, 2002 (without enclosures) – 1 page;
3. Copy of U.S. Postal Service Domestic Return Receipt and Certified Mail Receipt – 1 page;
4. Plaintiff's fax to Christopher J. Christie, U.S. District Attorney dated March 12, 2002 (without enclosures) – 2 pages;

Cc:

Jo-Anne Spatola, J.S.C. (Stamped) RECEIVED JUN 17 2002 SUPERIOR COURT FAMILY PART

Sherry L. Silver, Esq.

ANDREI KEMP
1179 CARLTON TERRACE, UNION, NJ 07083-4110
(908) 688 4427
February 15, 2001

Via Certified Mail

The Honorable William L. Gormley
Chairman of the New Jersey State Senate Judiciary Committee
108 Hamilton Mall
4403 Black Horse Pike
Mays Landing, New Jersey 08330

Dear Senator Gormley:

I would like to present to the State Judiciary Committee what, in my opinion, is a serious abuse of power by some judges of the Superior Court and the Supreme Court of New Jersey and a well documented case of an anarchy within the judicial system for a purpose to protect a misconduct of a court appointed expert and an inadvertent misconduct of a judge.

(1) In March of 1997 the Superior Court of New Jersey removed my emotionally disturbed wife from our house, granted me stay in the family house, custody of our daughter and a restraining order against my wife. In September of 1997 our family went for a child custody evaluation to a court expert appointed by the presiding judge of the Superior Court, Family Part. Based on several incidents and an unusual delay of the evaluation report (171 days) I concluded that the child custody examiner used very damaging materials, which I gave him against my wife to coerce her to have sex with her for several months in exchange for a drastically dishonest evaluation in her favor.

(2) Representing myself in the court, I suggested during a plenary hearing that my separated wife, whose emotional problems were a result of her abuse by relatives, might have been victimized again by the child custody examiner.

(3) My adversary shouted in the courtroom that I had paranoia and the judge accepted this "diagnosis". I agreed to go for a psychiatric examination. The judge ordered me to provide the court with the name, address and the date of my appointment with the psychiatrist and wait with my examination until the psychiatrist receives a letter from the court and the child custody evaluation report. The letter, in judge's own words, presented the "problem" with me from the point of view of the judge (transcript, Appendix, page 4A, lines 14 to 16). This letter disappeared from the court files. In my opinion based on my conversation with a psychiatrist, this letter suggested to the psychiatrists that I should be diagnosed with paranoia.

(4) My two independent examinations by psychiatrists working for the court in New Jersey were nothing more than verbal lynching. They shouted at me and warned me that I would be in trouble if I file a complaint against the child custody examiner. Both psychiatrists diagnosed me with paranoia ignoring the evidence proving that the child custody evaluation report was based on fabricated facts to justify the recommended child custody to the woman with serious emotional problems. One of the examiners was so absorbed by my "paranoia" that he forgot to write anything about the main purpose of the examination, my qualification for child custody. Fortunately the examiners concluded that I qualified for the child custody because paranoia has no impact on the ability to be a good parent. My adversary apparently had chosen the wrong disease.

(5) I filed a well-documented complaint to the State Board of Psychological Examiners against the child custody examiner supported by evidence proving that the child custody evaluation report was based on fabricated facts. The Board "did not find any reason for disciplinary action".

(6) After such a bad experience with the local court experts I decided to go for the third examination to a psychiatrist from Manhattan, Dr. Joseph Martorano. The expert, after a short conversation, decided not to examine me but to send me to a psychologist working in the same building and to base his own report on my examination by this expert. My examination by the psychologist, Dr. Robert Broad, was long, professional and the only honest examination which I had. The psychologist said to me after the examination: "You do not have any problems. Your only problem was that you did not have an attorney in the court". His report (Appendix, page 6A) submitted to the court confirmed his position. When I asked Dr. Martorano, the psychiatrist, to indicate in his report specifically that I did not have paranoia, he said that, although Br. Broad assured him that I do not suffer from this problem, he could not do this because he "received a letter from the judge". The psychiatrist, who based his report on Dr. Broad's examination without performing any examination on me, also found me qualified for the child custody but, in an apparent effort to protect the child custody examiner, wrote that I did not have paranoia except a fixed idea about what he called "a relationship" between my wife and the child custody examiner.

(6) After almost 4 years since my wife was removed from the house the case is in the state of judicial insanity. This is the current status:

Our 8 year old daughter is in custody of a woman who, in my opinion based on almost 14 years of

observations since I met her, is dangerous to the child with proven in court serious emotional problems. She comes from the family with tradition of violence. Just during the first several years of our marriage one of her brothers was killed, the second was critically wounded with a knife. I do not know all the problems because she kept them secret. She had depression and was suicidal after the separation. The court denied my motion to send this woman for psychiatric examination. While I was examined by five experts, her only examination was by the child custody expert; I do not have any visitations despite the fact that all the court experts found me fully qualified for child custody. Our wonderful daughter found a solution and invited me to come every Saturday to the church where I see her for several hours;

Within the last two years four child custody court appointed experts refused to perform the child custody evaluation;

While the court could not refuse to do its judicial duty and to refuse to accept my motions and appeals, all the procedures were rescheduled several times and substantially delayed without any justification. My well supported with evidence motion to disqualify the child custody evaluation report as based on fabricated facts disappeared in the court without any decision. The second such motion was recently denied by the court without examination of the evidence and without any explanation;

The divorce judge, Katherine R. Dupuis, looted me during division of marital assets and explained this as an "inadvertent court error" (Appendix, page 8A, Statement of Reasons denying my motion to stay the judgement). Despite admitting this error the court refused to correct it violating R.1:13-1. My court ordered child support payments are excessive. My ex-wife, instead of spending this money for the child, maintains the living standard of a person earning a fraction of what she earns and spends the money on

her attorney who stretches the case without any mercy. The judges apparently cooperate;

My motions were decided by judge Dupuis after she was transferred to the Criminal Part of the Court and the hearings were in the Criminal Part building;

Two judges of the Appellate Court performed a hoax affirming the judgement, which my adversary and the trial judge repeatedly admitted that contains errors (Appendix, pages 8A, 10A and 13A). The trial court refused to correct the unquestionable errors. The Supreme Court granted my Petition for Certification (Appendix, page 14A) and later accepted, more than one months after the deadline for filing, an opposition to my Petition for Certification without the required motion to allow filing out of time. The Supreme Court reversed its own order and denied my Petition for Certification apparently accepting the statement of my adversary (Appendix, page 13A) that the division of marital assets "can be corrected by a consent order once plaintiff chooses to stop his appeal". This way the Supreme Court left the division of marital assets to the generosity of my adversary. My motion for clarification of this decision is pending for several months. My adversary could any time propose a consent order, but she never did and apparently does not have such an intention;

All the judges violated practically every applicable court rule. I would like to admit that the only judge who was honest was the judge who "inadvertently" wrote the unfortunate letter to the psychiatrists;

The child custody hearing ordered by the court almost two years ago was rescheduled four times and it is suspended pending child custody evaluation which four court appointed examiners refused to perform and which has not been assigned to any other examiner;

My second appeal dealing with the child custody, several months after filing, is not even scheduled and was assigned as a no priority case in violation of

court rules. The reason for not scheduling is that the Supreme Court "inadvertently" forgot to send to the Appellate Division the order denying my Motion for Direct Service;

The decision of the Supreme Court granting me the Petition for Certification was deleted from the Supreme Court computer and it looks that it never existed;

The court clerks refused to give me access to my file. My motion to the Assignment Judge to find the missing records and give me access to my file (Appendix, page 15A) was denied;

My malpractice case against the court experts was dismissed due to the lack of affidavit of merit despite the fact that the experts did not provide me, as required by the law, with the documents needed for obtaining the affidavit;

When I hired an attorney, he advised me to give up. He told me that I am only "tightening the rope around my neck";

The court procedures were an unmasked comedy. As an example, judge Dupuis insisted that court experts found me unqualified for the child custody and, when I tried to correct her, shouted that she was "alarmed with my behavior";

I filed a complaint to the Office of Attorney General of the State of New Jersey asking for investigation of the case and offering evidence such as records of my conversations with court clerks and attorneys, video-recording of violent incidents with my ex-wife and hundreds of pages of other records. The Office, according to the letter (Appendix, page 17A) sent to me, "after investigation" without much evidence from me "has concluded that no further action by the Division is necessary at this time". My two other letters asking for the current status of the case were not answered.

Can the judges who are appointed to provide justice so massively violate the law? Who can discipline the

judges? Diagnosing political adversaries with mental disease was practiced in the Soviet Union but later this method was abandoned. Is this method common in our Country? I have contact with a person who has similar experience. Is the judiciary system of the State of New Jersey so corrupt or my case made it corrupt? How will this system work in the future when the young court clerks who, apparently following orders from judges, refuse to give me access to my file will be appointed to work as judges and prosecutors? Will the courts be decorated with portraits of judges who handle this case? I came to this country from Poland 20 years ago and, if I would not experience this by myself. I would not believe that something like that could happen in the United States of America. What is the future of our country with such a judicial system? Who can we trust if we can not trust the judges? How long this will continue? Will my daughter survive this insanity? Who will be responsible if the child will be hurt by the emotionally disturbed woman who clearly is not a normal person.

I do not know if the New Jersey State Senate Judiciary Committee can help me. I will be very thankful to you for taking this case for investigation or even giving me an advice what I should do to protect my daughter. I am also ready to submit to the Committee unquestionable evidence supporting this complaint and go for full psychiatric examination to any honest psychiatrist.

Respectfully submitted,

s/ Andrei Kemp

Enclosure: Appendix, 17 pages.

ANDREI KEMP
1179 Carlton Terrace, Union, NJ 07083-4110
Tel.: (908) 688 4427, E-mail: akemp60356@cs.com
July 24, 2001

Via Certified Mail

The Honorable William L. Gormley
Chairman of the New Jersey State Senate Judiciary Committee
108 Hamilton Mall
4403 Black Horse Pike
Mays Landing, New Jersey 08330

Dear Senator Gormley:

(1) On March 02, 2001 your office received from me a letter-complaint supported by evidence describing, what is in my opinion, a well-documented case of judicial anarchy in the Judicial System of the State of New Jersey. On March 8, 2001 you sent a copy of my letter to Mr. Patrick Monahan, Chief of Professional Services, Administrative Office of the Courts asking him to give this letter to "appropriate member" of his staff for a review and a response directly to me.

(2) On May 10, 2001 I called the Administrative Office of the Courts asking what was the result of the review. The same day I received a telephone call from Mr. John Tonelli, Chief Investigator of the Advisory Committee on Judicial Conduct, who told me that the Administrative office of the Courts had not received your letter. On May 14, 2001 the office of Mr. Patrick Monahan received from me a letter and more court documents. A copy of this letter I sent to your office.

(3) On May 18, 2001 I received a letter from Mr. Monahan (Enclosure A) stating that the documents which I sent "do not deal with the conduct of a judge but with the substance of my court case" and that the

Committee "does not have jurisdiction to review judicial decision to decide if they are correct..." etc. What Mr. Monahan wrote in the letter was clearly not true because, in addition to judicial decision, my documents contained proofs of other actions of the judges and court clerks which are clearly not judicial decisions, but qualify to be investigated as serious violations of Rules Governing The Courts Of The State of New Jersey and as criminal acts including but not limited to:

- The Supreme Court computer files have been tampered by removing the Supreme Court decision granting me Petition for Certification of my Appeal Case Docket No. A-6081-98T1.
- Documents have been removed from the file of my divorce/domestic violence case.
- Court clerks refused to give me access to my file apparently following orders from judges.

(4) On the same day I called Mr. Monahan for an explanation. In a long conversation Mr. Monahan told me that he did not give my letter for review by Mr. Tonelli as you asked him in you letter, he simply kept the letter in his drawer. Mr. Monahan tried to convince me that all the judges have the right to ignore the Court Rules, the evidence, common sense and whatever they want and they have the right to do whatever they want. Mr. Monahan did not claim that what the judges did in my case was justified because this would be an absurd but asked me if I think that my ex-wife gave one million dollars to the Supreme Court Justices to bribe them and influence them to do whatever they did.

(5) My ex-wife clearly could not give one million dollars to the judges. There are two people who have, could give and would give that much money an even more to avoid being prosecuted. They are: the Presi-

ding Judge of Family Part of the Superior Court of Union County, Melvin Whitken, J.S.C. and the child custody examiner, Edwin Rosenberg, Ph.D.

(6) While the Office of Attorney General of the State of New Jersey did not close the case after receiving my complaint but stated that "no further action by the Division is necessary at this time", within the three years since this judicial insanity started I conducted my own investigation and collected evidence to prove that judge Melvin Whitken and the child custody examiner coerce women to have sex. Judge Whitken assigns Dr. Rosenberg as child custody examiner when attractive woman is getting divorce, particularly when such a woman has problems, and Dr. Rosenberg takes care of the rest. The woman has a choice to lose the custody of the child or have sex with the two powerful people for a period of time in exchange for being awarded child custody and favors in division of marital assets. The two powerful and prominent people, instead of providing justice, literally rape women using the power of their position instead of physical force.

(7) This is what happened with my ex-wife, the mother of my daughter, who has serious emotional and mental problem. This woman was a slave sex of Dr. Rosenberg for a period of several months what I suggested in the court on March 23, 1998. Now, after conducting my own investigation I have reasons to believe that judge Whitken was involved in the case.

(8) Judge Whitken assigned judge Spatola to my case. Judge Spatola, in violation of Court Rules, wrote a letter to three psychiatrists suggesting them that I should be diagnosed with paranoia. Judge Whitken assigned the second judge to my divorce case. This judge, Katherine R. Dupuis, J.S.C. conspired with my attorney and my adversary to loot me during the division of marital assets and ordered me to pay

excessive child support ($900.00 per month). Judge Dupuis admitted that "inadvertent errors" have been made numerous times but refused to correct them. Judge Whitken assigned the third judge, David J. Issenman, J.S.C. who refused to give me access to my file, denied my motion to correct the "inadvertent court errors" admitted by judge Dupuis, denied my motion to send my ex-wife for psychiatric examination. All that decision where affirmed by Appellate Division. The judges risked their own professional position by endangering the welfare of my daughter refusing to send my ex-wife for psychiatric examination. They would not do this for a child custody examiner, but they would do this to protect another judge. The motivation of the corrupt judges can be a false feeling of professional loyalty what resulted in so called "the blue wall of silence", but it could be also money from the two wealthy people. It is up to the investigation to find that.

(9) My ex-wife is not a mentally normal person and could not be found qualified for child custody by any honest psychiatrist. Most probably she would be ordered to undergo a psychiatric treatment. In such a case this woman would disclose what happened to her and be a witness in criminal prosecution against the judge and the psychologist. Judges Dupuis and Issenman, who refused to order a psychiatric evaluation of my ex-wife, protect their supervisor and tried to prove to me that the court can get into complete judicial anarchy and I have no chance to fight it. Appellate Division judges and judges in the Supreme Court of the State of New Jersey reinforced this position. The Attorney General of the State of New Jersey did not claim that there is no case because this would be absurd. He received sufficient evidence of criminal acts with my complaint. It was safer to decide that "no further action by the Division is necessary at this time".

(10) What judge Melvin Whitken and psychologist Edwin Rosenberg do is clearly a rape. Women who accepted such an arrangement can not complaint. Complaints of other women to the prosecutor and the Advisory Committee on Judicial Conduct are processed the same way as my complaints, they are dismissed. Most probably they contain much less evidence than the evidence enclosed to my complaint.

(11) My divorce case is in control of criminals. My court cases were transferred from honest judges to dishonest judges who performed the hoax and justified this as "inadvertent court errors". Several people including judges, court experts, attorneys and court clerks conspire to protect the two prominent people. The poor woman with serious mental problems, the mother of my daughter, instead of being ordered to get psychiatric help to make her fit for child custody, was literally raped for a period of several months and I was diagnosed with paranoia by three of court experts who followed an order from the judge to shut up my mouth. Other judges joined the conspiracy to prove to me that the corrupt court system has the power to violate any rules and laws to "tighten the rope around my neck" as one of my attorneys told me. The Attorney General conducted an "investigation" without taking from me the evidence, which I offered him. The investigation by the Advisory Committee on Judicial Conduct found that everything was judicial decisions ignoring clearly criminal acts such as tampering with court records, removing documents from the files, not allowing me to get access to my files and much more. The Chief Investigator "inadvertently" missed clearly criminal and disciplinary acts when he prepared the case for review by the Advisory Committee on Judicial Conduct.

(12) The people who decided not to investigate the case or came to the conclusion had to have very

strong motivations, stronger than fear of being imprisoned for conspiracy to protect the judge and endanger the welfare of a child. While prosecution in such cases is difficult, the case of Du Page Seven (see Enclosure B) proves that this is possible. The prison terms in this case were as high as 6 years. The investigators in my case from the Office of the Attorney General and Advisory Committee on Judicial Conduct should know about that. Mr. Patrick Monahan, Chief of Professional Services, Administrative Office of the Courts is clearly the chief conspirator understanding that his duty is to protect judges and cover the truth. What Mr. Monahan is doing is conspiracy to obstruct justice. Unlike judges, he does not have immunity from criminal prosecution.

(13) Criminals can be in every professional group even such respected as priests, doctors, rabbis, teachers and judges. Unfortunately judges are practically almost always protected from any criminal responsibility. There was a case of a judge who kept raping women in the courthouse for many years, complaints of victims were being ignored by prosecutors. Now this judge is in prison after being deported from Mexico where he tried to escape from justice. Similar situation was with a powerful New Jersey prosecutor who chose to commit suicide in a cheap motel in Nevada instead of being in prison. A retired Superior Court judge was arrested not long time ago for soliciting prostitution (see Enclosure C). This judge served on benches in Union, Middlesex and Somerset Counties for 15 years. I do not know what he was doing with attractive women who had court cases, but my impression from numerous contacts with court clerks in the Union County Courthouse was that for the clerks "relationship" between a judge and a woman was not unusual. My impression was that over the years they knew many such cases in the Union County Courthouse.

(14) The State of New Jersey has a long tradition of ingrained official corruption, see a commentary from The Star Ledger, April 25, 2001 (Enclosure D). The conclusion of the commentator that the present "allegation of corruption do not even remotely represent the type of criminal conspiracy that once engulfed the state" is true until investigation proves that the present allegations are just the tip of the iceberg. This will definitely happen if investigation of my case will be conducted. And this is why the Attorney General of the State of New Jersey refused to start the investigation. The investigation would prove that the system is corrupt at the level of the Supreme Court and the Office of the Attorney General of the State of New Jersey.

(15) The documents, which I submitted to the Advisory Committee on Judicial Conduct and to the New Jersey State Senate Judiciary Committee, contain unquestionable proofs of judicial anarchy and conspiracy of the Judicial System of the State of New Jersey with the Attorney General. While part of this anarchy are judicial decision, substantial part are criminal acts for which judges should be disciplined and prosecuted. Not long time ago there was an impeachment process of a State of New Hampshire Supreme Court judge for a misconduct. This judge contacted a judge in the Appellate Division. What several judges in my case did is by far more serious and qualifies not only for impeachment, but for prosecution.

(16) This case is a case of criminal conspiracy as defined in New Jersey Criminal Code, Section 2C:5-2. The judges, attorneys, court experts and court clerks conspired to:

- Obstruct justice;
- Endanger the welfare of a minor by giving the child custody to a mentally sick person;

- Defraud me of money and property
- Prejudice me in my property and character;

(17) My ex-wife, the victim of the corrupt system apparently agreed to being raped and blames me for that. There is no way that I will agree to be looted and diagnosed with mental disease. I am not the one who is here crazy, the system is crazy. The criminals have to be removed from the justice system. The participants of this conspiracy supporting each other reached the level of insanity. It is my duty to protect my daughter from the danger of being in custody of her mother, a mentally sick woman who cooperated with the criminals assuming that this was the best for her. This woman knows the truth. If she would see that the conspiracy is falling apart, she may kill the child and commit suicide. After spending ten years with her, I know what is in her mind. This woman should be granted immunity from prosecution in exchange for cooperation with the investigation.

(18) This case should be assigned to honest judges. The Supreme Court of the State of New Jersey still has a chance to bring at least some justice to this case by correcting the anarchy on its own motion and sending the case for investigation to the Attorney General. This will definitely shake the Justice System of the State of New Jersey. If the Supreme Court will continue this insanity, this case will shake the Judicial System of the entire Country. I am not the only victim of corrupt judges, there are more of them, many of them in the State of New Jersey. The honorable criminals picked up on a wrong person. Nobody will intimidate me, there is no way that I will sacrifice my daughter being intimidated by the criminals who decided "to tighten the rope around my neck". What happened here is a well-documented case of criminal conspiracy, the evidence is overwhelming and is waiting for investigation. It is the responsibility of the State of New

Jersey Senate Judiciary Committee to initiate this process.

(19) I expect you to refer this case for an urgent investigation by the Attorney General in addition to submitting all the documents to all the members of the New Jersey State Senate Judiciary Committee for review and discussion. The Committee has a power to recommend investigation by a special prosecutor.

(20) Please notify me as soon as possible about the progress in this case of high profile corruption.

Respectfully submitted,

s/ Andrei Kemp

Enclosures:

A. Letter from State of New Jersey Advisory Committee of Judicial Conduct to Andrei Kemp dated May 16, 2001.
B. Newspaper clip "Officials Face Trial in Alleged Plot to Frame Man for Murder", The New York Times, March 9, 1999.
C. Newspaper clip "Retired Superior Court Judge Arrested in Brothel Raid", The Star Ledger, January 18, 2001.
D. Newspaper clip "Tamer Times in Jersey", The Star Ledger, April 25, 2001.

ANDREI KEMP
1179 Carlton Terrace, Union, NJ 07083-4110
Tel.: (908) 688 4427 E-mail: akemp12@cs.com
January 25, 2002

The Honorable Christopher J. Christie
U.S. District Attorney
970 Broad Street
Newark, New Jersey 07102-2506

Re.: Investigation of criminal judicial conduct

Sir:

I respectfully request that you conduct an investigation of, what is in my opinion, a well-documented case of criminal judicial misconduct. My two enclosed letters to the Chairman of the New Jersey State Senate Judiciary Committee, State Senator William Gormley, describe the case. The attachments to the letters contain copies of several documents initially supporting my claim.

I can prove that this case is a result of criminal conspiracy of several judges, including judges of the New Jersey State Supreme Court, to protect a prominent judge and a court expert who committed serious criminal misconduct. As a result of this conspiracy my daughter is in great danger by being in the custody of a mentally ill woman with court-proven serious emotional problems. While the court refused to send this violent woman for psychiatric examination, the same court sent a letter to court experts suggesting them to diagnose me with mental disorders. This unprecedented case involves the removal and likely destruction of documents from court files as well as tampering with the official records of the Supreme Court of New Jersey to delete the initial decision of the Supreme Court of New Jersey to certify the opinion of the appellate court.

If you feel that the evidence included in the enclosed correspondence to State Senator Gormley is insufficient to start the investigation, please contact me so I may forward more documents to prove the case. I am ready to assist in any way necessary to investigate this case. Please note that, due to the fact that a child is in danger, this case should be treated as a high priority.

Respectfully submitted,

s/ Andrei Kemp

Enclosures:

- My letter-complaint to New Jersey State Senator William Gormley, Chairman of the New Jersey State Senate Judiciary Committee dated February 15, 2001 (4 pages) with Appendix (17 pages);
  (included as Appendix F, see page 30)
- My letter to New Jersey State Senator William Gormley, Chairman of the New Jersey State Senate Judiciary Committee dated July 24, 2001 (5 pages) with enclosures (5 pages);
  (included as Appendix G, see page 37)

ANDREI KEMP
1179 Carlton Terrace, Union, NJ 07083-4110
Tel.: (908) 688 4427 E-mail: akemp12@cs.com
March 12, 2002

To : FAX NO. 973 645 2702
Total number of pages: 37

The Honorable Christopher J. Christie
U.S. District Attorney
970 Broad Street
Newark, New Jersey 07102-2506

Re.: Certified letter received by your office on January 31, 2002

Sir:

On January 31, 2002 your office received my certified letter (Enclosure A) which cannot be found.

Due to the fact that you are a partner in law firm of Dughi and Hewitt, which represents one of the defendants in my civil law suit against court experts and attorneys involved in this unusual matter (see Enclosure B), in my opinion, you should disqualify yourself from investigating the case and transfer my request for investigation to the nearest U.S. District Attorney, Hon. James B. Comey, Jr., United States Attorney for New York Southern District.

I am enclosing a copy of U.S. Postal Service Certified Mail Receipt and Domestic Return Receipt, Enclosure C, to allow you to investigate the mishandling of my letter by your office. The Office of U.S. Attorney in Newark received my first letter asking for investigation of the same case in May of 2000 (see Enclosure D). I did not get any answer and was unable to find why your office did no provide me with any explanation.

If, in your opinion, the evidence included in the enclosed documents is insufficient to start the investigation, please contact me so I may forward more records. I am ready to assist in any necessary way.

Please note that, due to the fact that a child is in danger, this case should be treated as a high priority.

Respectfully submitted,

s/ Andrei Kemp

Enclosures:

A. My letter-complaint (included as Appendix H, see page 46) to U.S. District Attorney in Newark, NJ dated January 25, 2002 with the following enclosures:

- My letter-complaint to New Jersey State Senator William Gormley, Chairman of the New Jersey State Senate Judiciary Committee dated February 15, 2001 (4 pages) with Appendix (17 pages);
- My letter to New Jersey State Senator William Gormley, Chairman of the New Jersey State Senate Judiciary Committee dated July 24, 2001 (5 pages) with enclosures (5 pages);
  (This letter is included as Appendix H, see page 46)

B. Copy of Dughi and Hewit letter, File No. 8172, dated May 4, 2000;

C. Copy of Certified Mail Receipt dated 01/26/02 and Domestic Return Receipt, Article Number 7000 1670 0001 0554 4897 signed by NJ US Attorney's Office on 01/31/02;

D. Copy of Certified Mail Receipt dated May 27, 2000 and Domestic Return Receipt, Article Number 7099 3400 0007 2212 9485 signed by NJ US Attorney's Office on 5/30/00;

ANDREI KEMP
1179 Carlton Terrace, Union, NJ 07083-4110
Tel.: (908) 688 4427
January 20, 2003

Via certified mail, return receipt requested.

Michael Chertoff, Assistant Attorney General
United States Department of Justice
Criminal Division
950 Pennsylvania Ave.
Washington, D.C. 20530-0001

Re.: Request to investigate criminal judicial misconduct.

Sir:

I would like to ask you to assign an U.S. Attorney to conduct an investigation of a high-profile criminal misconduct of a judge of the Superior Court of New Jersey, Union County and a court expert who coerce women to have sex. The case involves other judges who violated the law to protect the two prominent people.

My request to investigate the case was sent originally on January 26, 2002 as a certified letter (Enclosure 1) to the U.S. District Attorney for the State of New Jersey, Christopher J. Christie. The story was described in my two letters to Senator William Gormley, Chairman of the New Jersey State Senate Judiciary Committee attached to the letter. The U.S. District Attorney Office received the letter on January 31, 2002 (see return receipt, Encl. 2). This letter, according to the woman answering telephones at the U.S. District Attorney Office, "was lost". Despite the fact that within the last year I sent the same letter twice and had numerous conversations with the office, I was unable to get any answer.

Believing that Mr. Christie should disqualify

himself from the case due to conflict of interest and the case should be transferred for investigation to the nearest U.S. District Attorney, James B. Comey, Jr., United States Attorney for New York Southern District, I wrote a letter to Mr. Comey. I received an answer stating that "there is no basis for federal criminal jurisdiction in the Southern District of New York.

Handling of this case by Mr. Christie and FBI offices, clearly a cover-up, is a subject of my complaint to H. Marshall Jarrett, Counsel of the Office of Professional Responsibility of the United States Department of Justice (see Enclosure 3) which I am mailing in another letter. In addition to the documents copied as an attachment to this letter, I have full records of my numerous telephone conversations with the offices of the prosecutors and FBI. If you feel that the evidence included in the enclosure and the description of the case is insufficient to prove that the case should be investigated, please contact me so I may forward more records to prove the case. I am ready to assist in any way necessary to investigate this case.

Knowing you as a person with reputation of unquestionable integrity, I believe that you will assign an honest prosecutor and put this case on the right track.

I expect to get from you within a reasonable time a letter with the name of the person assigned to the case and his telephone number. I am eager to cooperate and provide you with more information.

Sincerely,

s/ Andrei Kemp

Enclosures:

1. My letter to U.S. District Attorney Christopher J. Christie dated January 25, 2002 (with 31 pages of enclosures);
   (included as Appendix H, see page 46)

2. Copy of USPS Certified Mail Receipt and Return Receipt;
3. My letter to the H. Marshall Jarrett, Counsel, United States Department of Justice, Office of Professional Responsibility dated January 20, 2003 (without enclosures).

(Logo) Department of Justice

U.S. Department of Justice
Criminal Division

Washington, DC 20530-0001

March 20,2003

Mr. Andrei Kemp
1179 Carlton Terrace
Union, NJ 07083-4410

Dear Mr. Kemp:

Thank you for your letter to the Assistant Attorney General. After careful review of the information you have provided, it has been determined that further action by the Department is not warranted.

Your complaint relates to the conduct of a state judge, rather than a federal judge. Policing the conduct of state and local officials is the primary responsibility of the State, not the Federal Government. The authority of the Justice Department to review matters involving the decisions and actions of state and local officials, including judges, is extremely limited. Absent evidence of federal criminal conduct, we are unable to act, even though the conduct complained of may appear to be arbitrary, unfair, or even illegal under state law. Such allegations must be left to state authorities to resolve. Accordingly, you should bring any evidence to support your allegations to the attention of state law enforcement officials.

If you believe that a state judge has acted in an unethical or unprofessional manner, you may contact the State's bar association, which is responsible for reviewing such allegations. You may also wish to

confer with private counsel to determine if other remedies are available to you.

We appreciate your writing to express your concerns and regret that we cannot assist you further in this matter.

Sincerely,

(no signature present)

Correspondence Management Staff
Office of Administration

ANDREI KEMP
1179 Carlton Terrace, Union, NJ 07083-4110
Tel.: (908) 688 4427
March 25, 2003

Via certified mail, return receipt requested.

Michael Chertoff, Assistant Attorney General
United States Department of Justice
Criminal Division
950 Pennsylvania Ave.
Washington, D.C. 20530-0001

Re.: Request to investigate criminal judicial misconduct.

Sir:

On January 27, 2003 your office received from me a request to investigate a high-profile criminal judicial misconduct (Enclosure A).

While I do not have sufficient evidence to prove in a criminal court that the Presiding Judge of Family Part, Superior Court of New Jersey, Union County, Melvin Whitken, J.S.C., and the child custody expert, psychologist Edwin Rosenberg, Ph.D., appointed by the judge to perform the child custody evaluation in the divorce/domestic violence case that I filed against my wife in March of 1997 conspire to coerce women to have sex with them, I have sufficient information to believe that they do this for years and that they victimized many women. Evidence of this crime could be collected only by investigators, who will first have to convince the victims that the investigation is honest to encourage them to challenge the two prominent and well connected persons. I do have evidence to support my claim of criminal misconduct of judges and prosecutors who, in the apparent attempt to discourage me from requesting the criminal investigation of the two prominent men, criminally violated the state and federal law and court rules as follows:

1. Jo Anne Spatola, Judge of the Superior Court of the State of New Jersey accepted in the court room "diagnosis" of my adversary that I am mentally ill based on a claim that my suggestion that such a respectable person as Dr. Rosenberg could coerce my wife to have sex with him is a proof of my paranoia. In violation of Court Rules the judge wrote letters to three psychiatrists ordering them to diagnose me with that illness.

2. The three letters have been removed from the court files, as were my letters to the court showing the names of the psychiatrists and the dates of my appointments. The psychiatrists refused to pro-duce the letters as I requested in my Request to Produce Documents in my malpractice case against them. The trial judge, Douglas T. Hague, J.S.C., violated the Court Rules. Instead of compel-ling the discovery and dismissing the pleading of the defendants for not answering my interrogatories and not producing the documents, he dismissed my case against the court experts.

3. Close to six years after the filing of the divorce case the Court is unable to find a child custody examiner who would solve the child custody dispute. Four court-appointed experts refused to perform the child custody evaluation. The last one, Dr. Silikovitz, breached the contract signed with me for performing the child custody evaluation.

4. The defendants hired politically connected law firms to represent them in court in my malpractice case against them. While I am unable to find political connections of the law firms hired by all the defendants, I found that:

- The child custody examiner, Dr. Rosenberg, hired the law firm of Dughi, Hewitt & Palatucci whose

owner, Mr. William Palatucci, has direct was contact with the White House after spearheading George Bush's campaign for president in New Jersey by organizing collection of election campaign money;

- Another defendant is represented by a law firm of Weiner Lesniak, Attorney at Law which is own by the New Jersey State Senator Raymond Lesniak;

5. The U.S. Attorney for the State of New Jersey, Christopher J. Christie, former partner in the law firm of Dughi, Hewitt and Palatucci, instead of disqualifying himself from the investigation due to conflict of interest, covered-up the case by claiming that his office did not receive my letters. My several letters to his office allegedly were "lost". I have records of telephone conversations proving that my two letters and two faxes were received and that "a young lady" was assigned to the case. Despite numerous attempts the U.S. District Attorney office did not disclose the name of this woman and did not give me contact to her.

6. My several letters sent to FBI offices in Newark and Manhattan, U.S. Attorney General John Ashcroft, U.S. Department of Justice Criminal Division, U.S. Attorney General Legal Counsel Office and Office of Professional Responsibility in Washington were also "lost" and not answered. The U.S. Attorney General Legal Counsel Office claims that a letter was sent to me several months ago and at least three times a copy of this letter was sent when I called the office and complained that I did not get any answer. None of the letters arrived. The office refused to fax me the letter. I have audio records of my numerous telephone conversation and telephone bills to prove my contact with the office;

7. As the head of the U.S. Department of Justice Criminal Division and Assistant U.S. Attorney General, in my opinion, you should disqualify yourself from

the case because you come from Elizabeth, New Jersey where the Family Court is located and most probably you personally know people involved in this criminal conspiracy. While it is unlikely that you knew what judge Whitken and Dr. Rosenberg do, I believe that the judges who committed series of criminal acts new that they two prominent, very rich and well connected men are connected to you and they protected the two men. The judges broke the federal law and conspired to obstruct justice.

8. The trial court refused to disqualify the reports of my psychiatric examinations produced in violation of the federal law, which requires disqualification of every document containing fabrications. Dr. Rosenberg submitted to the Appellate Court a falsified Child Custody Evaluation Report and his affidavit claiming that this report is the same report, which was submitted to the Court in March of 1998. I filed a motion to the Appellate Court to strike the document. This motion will be soon decided together with the appeal case. It is interesting to notice that none of the three co-defendants/psychiatrists, who, in the year of 1998, received the original Child Custody Evaluation Report, filed any opposition to this motion. Such an opposition would have to be supported by the copy of a letter from the Court and the copy of the Report. If any of the psychiatrists could prove that the report submitted to the Appellate Division is identical to the report sent by the trial court to the psychiatrist, he would have a strong case against me, he would prove that I really have "paranoia". None of them apparently took this chance. Such action would require replacement in his file of the original report with the falsified document. This would be a serious criminal misconduct. Based on my conversation with a clerk of the divorce judge supported by my description of a conversation with him on May 5, 1999 contained in my diary, I believe that the original Report was removed from the file by judge Whitken.

9. My motion to disqualify the Child Custody Evaluation Report supported by evidence proving that the main conclusions of the Report have been based on fabrications was ignored by the Court. The motion was not processed as required by the law and there is no court decision on the motion. The motion simply disappeared in the Court.

10. On March 24, 2003 I received from your office a letter (Enclosure B), an answer to my letter to you dated January 20, 2003. This letter is not legally valid due at least the following reasons:

- The letter is not signed;
- I send my letter to you, not to the Correspondence Management Staff, Office of Administration. The letter does not say that the author has been authorized by you to answer my letter;
- At the bottom there is no name of the author. "Correspondence Management Staff, Office of Administration" is a group of people, and not a person taking responsibility for the contents of the letter. In cases when document is prepared by a group of people, it should be signed by all members of the group or by one of them authorized to represent the group;
- The Correspondence Management Staff is not authorized to make decision concerning such action as criminal investigation. Only a staff prosecutor can make such decision.
- The entire text of the letter is legally and clearly not true. It is not true that "evidence of federal criminal misconduct" is "absent", it is not true. Sufficient evidence was attached to my letter. It is also not true that "policing the conduct of state and local officials is the primary responsibility of the State, not the Federal Government." Criminal misconduct of all state official (many of them recently in the

State of New Jersey) are investigated only by federal authorities, U.S. District Attorney and the FBI. State authorities investigate only minor disciplinary misconduct, not criminal acts;

The entire case is a well-documented case of judicial anarchy and prosecutorial cover-up. This is a case of a Soviet style justice in the U.S. Court system. I insist that you review the case and punish your subordinates who committed federal crime by writing the letter to me.

I believe that you should disqualify yourself from the investigation and transfer it to a person assigned to the case by U.S. Attorney General John Ashcroft. You work in the Department of Justice, not Department of Obstruction of Justice. You took the oath after accepting your current position and it is your duty to provide justice. As the head of Criminal Division you are responsible for misconduct of your subordinates, and you are not immune from prosecution for covering-up the case.

Sincerely,
s/ Andrei Kemp

Enclosures:

A. My letter to Michael Chertoff, Assistant Attorney General, United States Department of Justice, Criminal Division, dated January 20, 2003, without enclosures; (included as Appendix K, p. 50)
B. Letter sent to my by U.S. Department of Justice, Criminal Division, Correspondence Management Staff, Office of Administration; dated March 20, 2003; (included as App. L, p. 53)

Cc via certified mail, return receipt requested:
John Ashcroft, U.S. Attorney General;
H. Marshall Jarrett, Counsel, U.S. Department of Justice, Office of Professional Responsibility;

(Logo) Department of Justice

U.S. Department of Justice
Office of Professional Responsibility

Washington, DC 20530
JUNE 4, 2003 (stamped)

Mr. Andrei Kemp
1179 Carlton Terrace
Union, NJ 07083-4410

Dear Mr. Kemp :

This is in response to your January 20, 2003 correspondence and subsequent telephone inquiry to the Office of Professional Responsibility (OPR). You complained that the local U.S. Attorney's Office and the Federal Bureau of Investigation refused to investigate your claims of criminal misconduct by court experts and alleged misconduct by presiding judges with regard to your domestic violence and child custody cases. You requested assistance by this Office.

OPR has jurisdiction to investigate allegations of misconduct involving Department of Justice attorneys or law enforcement personnel that relate to the exercise of an attorney's authority to investigate, litigate or provide legal advice. For your information, United States Attorneys (USA) are vested with broad discretionary authority to determine whether and how to pursue criminal investigations and prosecutions. Absent specific information suggesting that the discretion was corruptly, or otherwise inappropriately, exercised, OPR will not review the exercise of the authority .Based on our review of your correspondence, we have found no specific information suggesting that the USA in this matter exercised his discretion inappropriately.

We regret we can be of no further assistance to you.

Sincerely,

s/ (illegible signature)

Shamelle N. Lyles
Program Analyst

DECISIONS OF THE SUPREME COURT OF THE STATE OF NEW JERSEY

Hubbard v. Reed, 168 N.J. 387 (2001);

Hubbard v. Reed (A-6-00)

SUPREME COURT OF NEW JERSEY
A- 6 September Term 2000
NINA HUBBARD, as Guardian Ad Litem of NIA HUBBARD, her minor child,
Plaintiff-Appellant,
v.
DR. JOSEPH REED, D.D.S.,
Defendant-Respondent,
and
DR. ROBERT KARDON, D.D.S.,
Defendant.

Argued January 29, 2001 -- Decided June 21, 2001
On certification to the Superior Court, Appellate Division, whose opinion is reported 331 N.J. Super. 283 (2000).
Edward J. Crisonino argued the cause for appellant.
Timothy P. Mullin argued the cause for respondent (Mintzer, Sarowitz, Zeris & Ledva, attorneys; Mr. Mullin and Kimberly A. Jubanyik, on the briefs).
William L. Gold submitted a brief on behalf of amicus curiae, Association of Trial Lawyers - New Jersey (Bendit Weinstock, attorneys; Mr. Gold and Abbott S. Brown, on the brief).
The opinion of the Court was delivered by
PORITZ, C.J.

This case and Palanque v. Lambert-Woolley, ___ N.J. ___ (2001), also decided today, are the seventh and eighth malpractice actions to require intervention by this Court for a determination of the meaning and applicability of the Affidavit of Merit Statute enacted six years ago. Plaintiffs have raised numerous issues

in a variety of factual settings that implicate both the language of the statute and the Legislature's intent. In our opinions we have focused on the legislative goals, and on the words and phrases used by the Legislature to carry out those goals. Where we have found ambiguity, we have looked to the legislative purpose underlying the statute, but we have also sought to eliminate any remaining confusion and to provide guidance for the future.

At issue in this case is whether a plaintiff in a common knowledge malpractice action must comply with the affidavit requirement of the statute. Under the statute, a plaintiff who brings a malpractice action against a licensed professional must provide the defendant with the affidavit of an appropriate expert stating that the action has merit. N.J.S.A. 2A:53A-27. Because we do not believe that the Legislature intended to burden a plaintiff with the affidavit requirement when expert testimony is not required at trial to establish the defendant's negligence, we hold that an affidavit need not be provided in common knowledge cases when an expert will not be called to testify "that the care, skill or knowledge . . . [of the defendant] fell outside acceptable professional or occupational standards or treatment practices." N.J.S.A. 2A:53A-27. . . . . The doctrine applies where "jurors' common knowledge as lay persons is sufficient to enable them, using ordinary understanding and experience, to determine a defendant's negligence without the benefit of the specialized knowledge of experts." Estate of Chin v. Saint Barnabas Med. Ctr., 160 N.J. 454, 469 (1999). Thus, a plaintiff in a common knowledge malpractice case will not need expert testimony at trial to establish the standard of care or a deviation therefrom.

.....

Palangue v. Lambert-Woolev, 168 N.J. 398 (2001)

Palanque v. Lambert-Woolley (A-16-00)

Argued January 29, 2001 -- Decided June 21, 2001
Poritz, C.J., writing for a unanimous Court.
In this appeal, the Court relies on its reasoning in Hubbard v. Reed, N.J. , (2001), decided the same day, to hold that an affidavit of merit, pursuant to N.J.S.A. 2A:53A-27, is not required in a common knowledge malpractice case.

SUPREME COURT OF NEW JERSEY

A- 16 September Term 2000
MICHELLE PALANQUE,
Plaintiff-Appellant,
v.
MARGARET LAMBERT-WOOLLEY, M.D.,
Defendant-Respondent.

Argued January 29, 2001 -- Decided June 21, 2001
On certification to the Superior Court, Appellate Division, whose opinion is reported at 327 N.J. Super. 158 (2000).
David P. Corrigan argued the cause for appellant (Hobbie, Corrigan, Bertucio & Tashjy, attorneys; Mr. Corrigan and Michael R. Hobbie, on the brief).
Richard A. Grossman argued the cause for respondent (Grossman, Kruttschinitt, Heavey & Jacob, attorneys).
William L. Gold submitted a brief on behalf of amicus curiae, Association of Trial Lawyers - New Jersey (Bendit Weinstock, attorneys; (Mr. Gold and Abbott S. Brown, on the brief).
The opinion of the Court was delivered by
Poritz, C.J.

This case is substantially like Hubbard v. Reed, ___ N.J. ___ (2001), also decided today. We rely therefore on much of what we said in Hubbard in holding that

an affidavit of merit is not required in a common knowledge malpractice case.

.....

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Supreme Court, U.S.
FILED
FEB 6 - 2004
OFFICE OF THE CLERK

(2)

No. 03-974

IN THE

Supreme Court of the United States

IN RE ANDREI KEMP,

Petitioner

BRIEF FOR RESPONDENT JAMES W. DOUGHERTY, ESQ. IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

THOMAS F. QUINN
Counsel of Record
ROBERT A. BERNS
AMY RENEE BALES
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
331 Washington Street
Newark, NJ 07102
(973) 624-0800

Attorneys for Respondent James W. Dougherty, Esq.

185628

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether petitioner has stated an appropriate question of law that may be addressed by this reviewing Court.

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COUNTERSTATEMENT OF THE FACTS

Mr. Andrei Kemp (hereinafter "Petitioner") instituted a divorce and custody action against his wife in the Superior Court of New Jersey in April 1997 captioned as *Kemp v. Kepka*, docket number FM-20-01606-97. The contentious matrimonial litigation ended with a dual judgment of divorce entered on November 20, 1998. Unsatisfied with the outcome of the divorce proceeding judgment, petitioner retained Respondent James Dougherty, Esq. ("Respondent Dougherty") to address rulings the Petitioner deemed to be unfair or oppressive. Petitioner claimed that Respondent Dougherty advised him to file a motion requesting a revision of the judgment before filing an appeal. Petitioner regarded Respondent Dougherty's advice to be a manipulation and "refused to accept his help" because he mistrusted Dougherty. As a result, Petitioner fired Respondent Dougherty and proceeded to represent himself *pro se*.

Thereafter, as a result of Petitioner's perception that he was wrongly treated in the divorce case, on July 24, 2000, he filed a Complaint alleging professional negligence and misconduct against five psychiatric experts who testified during the divorce case, a court appointed psychologist, and the two attorneys involved in the divorce action – including his former lawyer, Respondent Dougherty.

Petitioner alleged that the court appointed psychologist was dishonest in his assessment of petitioner's "serious psychological problems." Petitioner also alleged that the defendant psychiatrists covered up for the court appointed psychologist by testifying that Petitioner suffered from "paranoia." In his claim for legal malpractice, Petitioner alleged that Respondent Dougherty provided negligent

advice. However, as Petitioner failed to serve Affidavits of Merit against any of the defendant professionals as required by New Jersey's Affidavit of Merit Statute N.J.S.A. 2A:53A-26, *et seq.*, the professional defendants moved to dismiss Petitioner's Complaint.

Petitioner opposed the motions by arguing that his claims were protected by the sworn statement exception set forth in N.J.S.A. 2A:53A-28. Petitioner argued that he requested discovery from the defendant professionals (copies of court records) necessary for him to obtain affidavits of merit. However, it is undisputed that Petitioner never served discovery requests upon Respondent Dougherty.

At oral argument on August 4, 2000, Petitioner explained to the trial court that he had attempted to obtain Affidavits of Merit against each of the defendant professionals but had been unable to find affiants willing to opine that any of the medical or legal professionals deviated from the standard of care. Petitioner could not locate experts who would vouch for the merit of his legal malpractice and medical malpractice claims.

After questioning Petitioner extensively on the issue of his efforts to obtain affidavits of merit, the trial court concluded that Petitioner had failed to satisfy the requirements of the Affidavit of Merit Statute. Moreover, the Court determined that even if Petitioner had obtained records from the professional defendants, nevertheless, Petitioner failed to satisfy the requirements of the Act by failing to serve Affidavits or Merit.

Petitioner appealed the trial court's decision to the New Jersey Appellate Division, which rejected each argument

advanced by Petitioner, including his argument that the "common knowledge" exception to the Affidavit of Merit Statute applied. In its March 12, 2004 opinion, the Appellate Division stated:

> This is plainly not such a case [- common knowledge]. Considering the nature of the allegations, expert testimony is clearly required to establish the applicable standards of care in the legal, psychological and psychiatric professions, and how each defendant breached them.

See Pet. App., Ex. A, at p. 6.

Significantly, the court expressly found that Petitioner possessed all records needed to obtain an Affidavit of Merit. *See* Pet. App., Ex. A, at pp. 6-7.

Petitioner thereafter filed a Petition for Certification with the New Jersey Supreme Court, alleging that he was unable to obtain an Affidavit of Merit due to the corruption of New Jersey's judiciary and its judicial system. New Jersey's Supreme Court correctly denied this Petition on July 1, 2003. As a result, Petitioner filed the within Petition for Writ of Mandamus.

REASONS FOR DENYING THE PETITION

PETITIONER HAS NOT PRESENTED A COMPELLING ARGUMENT FOR GROUNDS FOR REVIEW OF THIS MATTER BY THIS COURT

Respondent James Dougherty, Esq. respectfully opposes Andre Kemp's Petition for Writ of Mandamus. The Petitioner has failed to meet the established criteria governing review and has not set forth compelling reasons for this Court to exercise its discretion to grant the extraordinary writ, which is sparingly granted. Petitioner fails to present a question of law that may be reviewed by this Court where "the validity of a statute of [this] State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States." 28 U.S.C.A. § 1257(a). Petitioner's professional negligence claims derive from New Jersey common law negligence principles. The Affidavit of Merit Statute is a New Jersey law that establishes a threshold showing that the asserted claim is meritorious. Neither the negligence claim nor the Affidavit of Merit presents an issue that concerns or impacts the Constitution, treaties, or laws of the United States. Rather, Petitioner's application merely presents unsubstantiated accusations and innuendo, and threats of violence to the judiciary of New Jersey. Consequently, Petitioner has not presented any grounds for judicial review by this Honorable Court.

Additionally, Petitioner has failed to present adequate grounds for this Court to grant review under 28 U.S.C.A. § 1651(a). The remedy of mandamus is drastic and only should be invoked in extraordinary situations as it amounts to a judicial "usurpation of power." *Kerr v. United States Dist. Court for Northern Dist. of California*, 426 U.S. 394,

96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976); *Commonwealth of Pennsylvania v. Newcomer*, 618 F.2d 246 (3d Cir. 1980). Moreover, granting an extraordinary writ is a function of this Court's discretion and is only warranted in exceptional cases. *Kerr v. United States Dist. Court for Northern Dist. of California*, 426 U.S. 394, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976).

Here, although not directly states as such, Petitioner appears to suggest that a Writ of Mandamus should issue because he was denied due process rights guaranteed under the Fourteenth Amendment. Nothing could be further from the truth.

This matter does not arise out of a deprivation of rights but rather out of Petitioner's disgruntlement with the outcome of his divorce proceeding from which he pursued professional malpractice claims against the attorneys and consulting medical professionals who were involved in that case, a matter that has been fully reviewed by New Jersey's courts. Petitioner refuses to accept that he had a full and fair opportunity to present his case and that he failed to present viable or meritorious claims against the professional defendants, including Respondent Dougherty. In response, Petitioner submits the within petition for an extraordinary writ – in reality a rambling jeremiad chock full of invective, innuendo, and paranoia that decries "judicial anarchy and conspiracy."

Petitioner's application to this Honorable Court betrays itself. Petitioner's writ does not seek to vindicate justice but rather belittles the judicial system and presents an affront to New Jersey's appellate process. Petitioner had his day in court, and the trial court, the Appellate Division and the

New Jersey Supreme Court ruled against him. Precedent and sound reasoning supported each of those decisions. Petitioner has not presented a scintilla of evidence to show that the rulings of the New Jersey court were egregious abuses of discretion that would support a claim to deprivation of due process and fundamental fairness. *Yeager v. Greene*, 502 A.2d 980 (D.C. 1985). Petitioner present application is nothing more than a continuation of his tirade against the judicial system, one that includes the threat of physical violence and harm.

Point 4 of Petitioner's Questions Presented offers the following "legal point."

> BRINGING JUSTICE TO THE JUDICIAL SYSTEM ELIMINATES **POTENTIAL ACTS OF VIOLENCE BY VICTIMS OF THE CORRUPT JUDGES**. SHOWING THAT THE SUPREME COURT DOES NOT TOLERATE SOVIET-STYLE JUSTICE IS AN IMPORTANT STEP IN **PREVENTING VIOLENCE AND TERRORIST ACTS** BY ELIMINATING REASONING BEHIND SUCH ACTS. THE CASE SHOULD BE SENT FOR RE-TRIAL BY HONEST JUDGES.

Pet. (i) (emphasis added).

Conduct of the kind exhibited by Petitioner is not acceptable, cannot be tolerated by this Honorable Court and falls far short of articulating a colorable issue for review in the form of an extraordinary writ. Petitioner has failed to demonstrate a clear and indisputable right to an extraordinary writ. Accordingly, Mr. Kemp's Petition for a Writ of Mandamus should be denied.

PETITIONER FAILED TO PRESENT A LEGAL ARGUMENT FOR THE NEW JERSEY SUPREME COURT TO REVIEW AND HAS FAILED TO PRESENT AN ISSUE RIPE FOR REVIEW THROUGH A WRIT OF MANDAMUS TO THE UNITED STATES SUPREME COURT

The mandamus remedy is a drastic remedy that should be invoked only in extraordinary situations where a petitioner's right to relief is clear and indisputable. *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661-62, 98 S. Ct. 2552, 2556-57, 57 L. Ed. 2d 504 (1978); *Kerr v. United States Dist. Court*, 426 U.S. 394, 402-03, 96 S. Ct. 2119, 2123-24, 48 L. Ed. 2d 725 (1976). The writ is only issued in exceptional circumstances where there has been a "clear abuse of discretion or 'usurpation of judicial power'" *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383, 74 S. Ct. 145, 148, 98 L. Ed. 106 (1953). "The traditional use of the writ of mandamus has been to confine a lower court to lawfully exercise its prescribed jurisdiction or compel it to exercise its authority when it is its duty to so act." *In re King World Productions, Inc.*, 898 F.2d 56, 58 (6th Cir. 1990); *see Kerr*, 426 U.S. at 402, 96 S. Ct. at 2123-24.

Petitioner has failed to provide an argument that will move this Court to grant his request for a writ of mandamus. Petitioner has not provided this Court with proof of an exceptional circumstance demonstrating that the New Jersey courts acted under a "clear abuse of discretion, or usurpation of judicial power."

The New Jersey Supreme Court correctly denied Petitioner's Petition for Certification because there was no question of law for the court to address. Pursuant to

New Jersey Court Rules, petitioner lacked the grounds required for Certification to the New Jersey Supreme Court. Rule 2:12-4 provides:

> Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matter if the interest of justice requires.

Petitioner asserted the following grounds for Certification to the New Jersey Supreme Court:

> The Certification should be granted on the ground that the matter presents a question of general public importance (Affidavit of Merit is impossible to obtain in some cases due to the culture of corruption in the State of New Jersey), Legal Arguments, Point VI and also that the interest of justice requires such certification.

Petitioner did not set forth an argument that satisfied the standard for obtaining Certification. Petitioner failed to demonstrate an error in the appellate court's decision, and was unable to point out a conflict between the appellate court's decision and any other state court decision, particularly since Petitioner admitted during the trial court proceeding that he failed to and could not obtain affidavits of merit against the defendant professionals.

Petitioner's present application to this Court similarly should be denied because it fails to properly state a question of law that may be addressed by this reviewing court. Therefore, Petitioner's request for a writ of mandamus should be denied.

NEW JERSEY'S AFFIDAVIT OF MERIT STATUTE IS CONSTITUTIONAL

The Affidavit of Merit Statute was designed as a tort reform measure and requires a plaintiff in any malpractice action to provide an affidavit of an appropriate expert stating that the plaintiff's claim is meritorious. *Chamberlain v. Giampapa*, 210 F.3d 154 (N.J. 2000); *Galik v. Clara Maass Medical Center*, 167 N.J. 341 (2001). The statute is designed to weed out frivolous malpractice suits at an early stage thereby allowing meritorious cases to proceed. *Galik*, 167 N.J. 341. The Affidavit of Merit Statute, N.J.S.A. 2A:53A-27, states:

> In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. The court may grant no more than one additional

> period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause. The person executing the affidavit shall be licensed in this or any other state; have particular expertise in the general area or specialty involved in the action, as evidenced by board certification or by devotion of the person's practice substantially to the general area or specialty involved in the action for a period of at least five years. The person shall have no financial interest in the outcome of the case under review, but this prohibition shall not exclude the person from being an expert witness in the case.

N.J.S.A. 2A:53A-27.

The statute is constitutional as it rationally relates to the legitimate government interest of weeding out frivolous lawsuits at an early stage. Furthermore, the statute is uniformly applied to "all lawsuits involving an alleged act of malpractice or negligence by a licensed person in his profession or occupation." *Id.* Pursuant to the rational basis standard, petitioner carries the burden of proving that this statute, which is presumed valid, is unconstitutional. Petitioner has failed to set forth any legal arguments challenging the validity of the Affidavit of Merit Statute. Instead, Petitioner has made terroristic threats against the judiciary of New Jersey, has fabricated aspersions and requests this Court to act in an unconstitutional manner by subverting the separation of judicial and legislative powers.

CONCLUSION

For the foregoing reasons, petitioner's request for a writ of mandamus should be denied.

Respectfully submitted,

THOMAS F. QUINN
Counsel of Record
ROBERT A. BERNS
AMY RENEE BALES
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
331 Washington Street
Newark, NJ 07102
(973) 624-0800

Attorneys for Respondent
James W. Dougherty, Esq.